

No. 12875

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United States  
Court of Appeals  
For the Ninth Circuit.

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ERNEST B. BROWNELL,

Appellant,

vs.

FRED M. MANNING, INC.,

Appellee.

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Transcript of Record

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Appeal from the United States District Court  
for the District of Montana.

FILED

MAY - 9 1951

PAUL F. O'BRIEN



No. 12875

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Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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OF RECORD

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In the District Court of the Thirteenth Judicial District of the State of Montana, in and for the County of Yellowstone.

No. 23467

ERNEST B. BROWNELL,

Plaintiff,

vs.

FRED M. MANNING, INC., AND ROBERT B. HAWKINS,

Defendants.

### COMPLAINT

Plaintiff for his complaint against the above-named defendants, and each of them, alleges:

#### I.

That at all times herein mentioned the Defendant, Fred M. Manning, Inc., was, and now is, a corporation duly organized and existing under and pursuant to the laws of the State of Oklahoma and engaged in the business of that of an oil drilling contractor and in the transportation of gasoline, oil, and other articles and commodities; that said Defendant has been, and now is, a foreign corporation authorized to transact business in the State of Montana; that in the course of said business said Defendant owned, operated, maintained, and controlled a certain so-called flat bed semi-trailer truck; that at the time **Plaintiff received his injuries** as hereinafter described, Defendant, Robert B. Hawkins, was an employee and agent of Defendant, Fred M. Man-

ning, Inc., and drove and operated said truck in the scope and course of his employment and as the agent and servant of said Defendant, Fred M. Manning, Inc., and with its consent.

## II.

That on or about the 27th day of December, 1946, and for some time prior thereto, the Defendant, Fred M. Manning, Inc., negligently maintained and operated said truck with defective and inefficient brakes and braking equipment and apparatus.

## III.

That one of the public highways in the State of Wyoming is known as U. S. Highway No. 20, and at the point where the [2\*] accident hereinafter alleged occurred runs in a general northerly and southerly direction.

## IV.

That on or about the 27th day of December, 1946, at approximately 2:30 p.m. of said day, Plaintiff was driving and operating a certain Burlington Trailways Bus owned by the Burlington Transportation Company in a general northerly direction on said U. S. Highway No. 20; that at said time the Defendant, Robert B. Hawkins, was driving and operating said so-called flat bed semi-trailer truck owned by the Defendant, Fred M. Manning, Inc., aforesaid, in a general southerly direction on said U. S. Highway No. 20; that as said motor vehicles approached and reached each other at a point ap-

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

proximately nine miles north of the City of Worland, in the State of Wyoming, the Defendant, Robert B. Hawkins, negligently operated said truck at an excessive and dangerous rate of speed, negligently failed to keep said truck under reasonable and proper control, negligently failed to keep a proper lookout, negligently drove and operated said truck to the left of the center line of said highway, and so negligently, recklessly, and carelessly drove and operated said truck that the same was caused to, and did, strike and collide with said bus with such great force and violence that gasoline carried by said truck was caused to be sprayed over said bus and ignited, thereby causing said bus to burst into flames and to be demolished, and inflicting upon Plaintiff the severe and permanent injuries hereinafter set forth.

#### V.

That the injuries to Plaintiff, as hereinafter set forth, were proximately caused by and contributed to by the negligence of the Defendants, and each of them, in each and all of the acts of negligence hereinbefore set forth.

#### VI.

That by reason of the negligence of Defendants, and each of them, as aforesaid, Plaintiff was burned and injured in and [3] about his entire body; that he received multiple fractures of both of his lower extremities; that he sustained a severe laceration of his forehead and scalp; that his skull was fractured, crushed, and broken; that he sustained first and second degree burns on his face and arms; first,

second and third degree burns on both hands, and his arms and shoulders; that he sustained a severe shock to his nervous system; that he received a severe injury to his back and spine; that he received severe internal injuries; that Plaintiff's general health and well-being have been greatly injured and impaired; that all of said injuries caused Plaintiff great pain and suffering and will cause him great pain and suffering in the future; that Plaintiff is advised and believes that all of said injuries are permanent, and that he will always suffer therefrom, all to his general damage in the sum of Seventy Thousand (\$70,000.00) Dollars.

## VII.

That because of said injuries and by reason of the negligence of the Defendants, and each of them, Plaintiff has been forced to incur, and in the future will incur, substantial expenses for medical and surgical treatment and advice, hospital care and attention, nursing services, X-rays and medicines, and other medical treatment to care for and relieve his said condition, all to Plaintiff's special damage in the sum of Fifteen Thousand (\$15,000.00) Dollars.

## VIII.

That at the time of said accident, and previous thereto, Plaintiff was an able-bodied man, and could, and did, earn at his occupation as a bus driver, approximately the sum of Thirty-eight Hundred (\$3,800.00) Dollars per annum, but that by reason of being injured, as hereinbefore set forth, Plaintiff's earning capacity has been wholly lost and

destroyed up to the [4] present time, and his earning capacity in the future will be greatly diminished and impaired, if not altogether destroyed, all to Plaintiff's special damage in the sum of Eighty Thousand (\$80,000.00) Dollars.

Wherefore, Plaintiff prays judgment against Defendants, and each of them, in the sum of One Hundred Sixty-five Thousand & no/100 (\$165,000.00) Dollars, together with Plaintiff's costs and disbursements incurred herein.

Dated this 23rd day of September, 1947.

THOMAS C. COLTON,  
Attorney-at-Law,

DAVIS, MICHEL, YAEGER &  
McGINLEY,

By THOMAS C. COLTON,  
Attorneys for Plaintiff.

State of Montana,  
County of Yellowstone—ss.

Thomas C. Colton, being first duly sworn, on oath, deposes and says:

That he is one of the Attorneys for Plaintiff in the foregoing complaint; that he makes this verification for and on behalf of said plaintiff for the reasons that the plaintiff is not now within the County of Yellowstone, Montana, where affiant resides and where this verification is made; that he has read the foregoing complaint and knows the



contents thereof, and that the same is true to the best of his knowledge, information and belief.

THOMAS C. COLTON.

Subscribed and sworn to before me this 10th day of October, 1947.

[Seal] WILLIAM A. COMBS,  
Notary Public for the State of Montana, Residing  
at Billings, Montana.

My commission expires on April 1, 1949.

[Endorsed]: Filed U.S.D.C. December 15, [5]  
1947.

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[Title of District Court and Cause.]

NOTICE OF INTENTION TO FILE  
PETITION FOR REMOVAL

To: Ernest B. Brownell, Plaintiff in the above-entitled cause, and to Thomas C. Colton and Davis, Michel, Yaeger & McGinley, Esquires, Attorneys for said Plaintiff:

You, and each of you, are hereby notified that Fred M. Manning, Inc., a corporation, one of the defendants in the above-entitled cause, intends to file and will file at the hour of 10:00 o'clock a.m. on the 15th day of November, 1947, in the above-entitled court in the above-entitled action, and immediately thereafter, or as soon as counsel can be heard, will present to said court the petition of said defendant Fred M. Manning, Inc., for the removal

of the above-entitled cause to the District Court of the United States for the District of Montana, and that at said time said defendant Fred M. Manning, Inc., will also present a good and sufficient ground on removal to the above-entitled court for its acceptance and approval in connection with said petition for removal as aforesaid, and will move said court for an order removing said cause to the District Court of the United States for the District of Montana.

Dated this 14th day of November, 1947.

COLEMAN, JAMESON &  
LAMEY,

By CALE CROWLEY,  
Attorneys for Fred M. Manning, Inc., One of Defendants.

Receipt of Copy acknowledged.

[Endorsed]: Filed U.S.D.C. December 15, [6]  
1947.

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[Title of District Court and Cause.]

## PETITION FOR REMOVAL

The petition of Fred M. Manning, Inc., a corporation, one of the defendants in the above-entitled cause, respectfully shows:

### I.

That petitioner is one of the defendants in the above-entitled cause; that said cause was commenced

by Ernest B. Brownell, plaintiff herein, by filing the complaint herein on or about October 10, 1947, and by serving summons and complaint thereafter on petitioner on or about Oct. 27, 1947, within Lewis and Clark County, Montana; that said cause is now pending in the above-entitled court; that your petitioner is informed and believes and therefore alleges that no service of summons and complaint has been effected upon the defendant Robert B. Hawkins.

## II.

That the above-entitled cause is a suit of civil nature; that plaintiff seeks recovery from defendants of \$125,000.00 for damages allegedly sustained by plaintiff as a result of alleged negligence of defendants, all as more fully appears in plaintiff's complaint on file herein; that the matter and amount in dispute and controversy in said cause, and the amount of damages claimed therein, exceed the sum and value of Three Thousand Dollars, exclusive of interest and costs. [8]

## III.

That your petitioner disputes plaintiff's claim and demand, and denies the same, and denies any and all liability with reference to the matters and things set forth and alleged in plaintiff's complaint, and denies that plaintiff is entitled to any judgment or relief against petitioner.

## IV.

That the controversy in the above-entitled cause at the time of commencement thereof was, and at all times since has been, and now is, wholly between



citizens of different states; that at the time of the commencement of the above-entitled action plaintiff was, ever since has been, and now is, a resident and citizen of the State of Wyoming; that petitioner Fred M. Manning, Inc., and the defendant Robert B. Hawkins at the time of the commencement of said action were, ever since have been, and now are citizens and residents of the State of Oklahoma and non-residents of the State of Montana.

## V.

That petitioner files and presents herewith a good and sufficient bond with good and sufficient surety as provided and required by the statutes of the United States in such cases, conditioned that it will enter and file in the District Court of the United States, for the District of Montana, within thirty days from the date of the filing of this petition for removal, a certified copy of the record in the above-entitled cause, and that it will pay all costs that may be awarded by the District Court of the United States, for the District of Montana, if said District Court shall hold that the above-entitled cause was wrongfully or improperly removed thereto.

## VI.

That said cause has not been tried in the above-entitled court, and this petition is made and filed herein before petitioner is required by the laws of the State of Montana, or any rule or [9] rules of the above-entitled court, to answer or plead to the complaint of plaintiff herein; that your petitioner desires to remove this cause before the trial thereof

from the said State court to the United States District Court, in and for the District of Montana.

Wherefore, petitioner prays and moves this Honorable Court to accept this petition and the aforesaid bond on removal, and to proceed no further herein except to make the order of the removal of said cause required by law and to cause the record herein to be removed to the aforesaid District Court of the United States, in and for the District of Montana.

COLEMAN, JAMESON &  
LAMEY,

By CALE CROWLEY,  
Attorneys for Defendant,  
Fred M. Manning, Inc.

State of Montana,  
County of Yellowstone—ss.

Cale Crowley, being first duly sworn, deposes and says:

That he is one of the attorneys for the defendant Fred M. Manning, Inc., in the above-entitled cause; that he makes this verification for and on behalf of the said defendant for the reason that none of the officers of said defendant is now in Yellowstone County, Montana, where affiant resides and makes this affidavit; that he has read the foregoing petition for removal and knows the contents thereof, and that the matters and things therein stated are true to the best of his knowledge, information and belief.

CALE CROWLEY.

Subscribed and sworn to before me this 14th day of November, 1947.

[Seal]                      JAMES H. KILBOURNE,  
Notary Public for the State of Montana, Residing  
at Billings, Montana.

My commission expires December 8, 1947.

[Endorsed]: Filed U.S.D.C. December 15, [10]  
1947.

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[Title of District Court and Cause.]

### BOND ON REMOVAL

Know All Men by These Presents: That Fred M. Manning, Inc., a corporation organized and existing under and by virtue of the laws of the State of Oklahoma, as principal, and Great American Indemnity Company, a corporation organized and existing under and by virtue of the laws of the State of New York, and duly authorized to do business in the State of Montana, as surety, are held and firmly bound unto Ernest B. Brownell, plaintiff in the above-entitled action, in the penal sum of Five Hundred Dollars (\$500.00) for the payment of which well and truly to be made to the said Ernest B. Brownell, plaintiff above named, the undersigned principal and surety bind themselves, their representatives, successors and assigns, jointly and severally, firmly by these presents.

Sealed with their seals and dated this 14th day of November, 1947.

The condition of this obligation is such that:

Whereas, the said Fred M. Manning, Inc., a corporation, one of the defendants in the above-entitled cause, is about to petition the above-entitled court for the removal of the above-entitled cause therein pending, in which Ernest B. Brownell is plaintiff, and said Fred M. Manning, Inc., is one of the defendants, to the District Court of the United States, for the District of Montana. [11]

Now, Therefore, if the said Fred M. Manning, Inc., shall enter and file in the District Court of the United States, for the District of Montana, within thirty days from the date of the filing of the aforesaid petition for removal, a certified copy of the record in the above-entitled action, and shall well and truly pay all costs that may be awarded by the aforesaid United States District Court if said United States District Court shall hold that such suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain in full force and virtue.

In Witness Whereof, the undersigned principal and surety have caused these presents to be executed this 14th day of November, 1947.

[Seal]                      FRED M. MANNING., INC.,  
By CALE CROWLEY,  
One of Its Attorneys.

[Seal]                      GREAT AMERICAN  
INDEMNITY COMPANY,  
By A. L. LA BAR,  
Its Attorney in Fact.

Service of the foregoing Petition and Bond and receipt of a true copy thereof acknowledged this 14th day of November, 1947.

THOMAS C. COLTON,  
Attorney for Plaintiff.

[Endorsed]: Filed U.S.D.C., Dec. 15, 1947. [12]

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[Title of District Court and Cause.]

### ORDER ON REMOVAL

The defendant Fred M. Manning, Inc., having filed herein within the time provided by law its petition for removal of said action to the District Court of the United States for the District of Montana, and having at the same time offered a good and sufficient bond in the sum of Five Hundred Dollars with said petition, conditioned as by the acts of Congress provided, and it further appearing that notice of intention to file said petition for removal and bond on removal was served on said plaintiff Ernest B. Brownell, and his attorney, by the said defendant Fred M. Manning, Inc., prior to the filing of said petition and bond herein,

Now, Therefore, this court does hereby accept and approve the said bond, and accept said petition, and does hereby order that the said action be, and the same is, hereby removed for trial to the District Court of the United States for the District of Montana, pursuant to the statutes of the United



States, and that this court will proceed no further in said cause.

Done in open court this 15th day of November, 1947.

GUY C. DERRY,  
Judge.

[Endorsed]: Filed U.S.D.C., Dec. 15, 1947. [13]

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[Title of District Court and Cause.]

### CERTIFICATE TO TRANSCRIPT

State of Montana,  
County of Yellowstone—ss.

I, Katie Davies, as Clerk of the District Court of the Thirteenth Judicial District of the State of Montana, in and for the County of Yellowstone, do hereby certify:

That I have compared the above and foregoing copies of complaint, notice of intention to file petition for removal, petition for removal, bond on removal and order on removal, in the above-entitled cause, with the originals thereof on file in my office as such Clerk of Court, and that the same are full, true and correct copies of such original files.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office this 9th day of December, 1947.

[Seal]                      KATIE DAVIES,  
Clerk of District Court.

[Endorsed]: Filed U.S.D.C., Dec. 15, 1947. [14]

In the District Court of the United States for the  
District of Montana, Billings Division

ERNEST B. BROWNELL,

Plaintiff,

vs.

FRED M. MANNING, INC., and ROBERT B.  
HAWKINS,

Defendants.

### ANSWER

Come now the defendant, Fred M. Manning, Inc., in the above-entitled action, and for its separate answer to plaintiff's complaint herein, admits, denies and alleges:

#### First Defense

##### I.

Deny that defendants owned and maintained a certain so-called flat bed semi-trailer truck; admit the remaining allegations of Paragraph I.

##### II.

Deny each and every allegation of Paragraph II.

##### III.

Admit the allegations of Paragraph III.

##### IV.

Admit that on December 27, 1946, at approximately 2:30 p.m. at a point approximately nine miles northerly from Worland, Wyoming, a Burlington bus driven by plaintiff in a general north-

erly direction collided with a truck driven in a southerly direction by defendant Robert B. Hawkins; deny each and every remaining allegation of Paragraph IV.

V.

Deny each and every and all allegations of Paragraph V.

VI.

Deny any knowledge or information sufficient to form a belief concerning the injuries, if any, and pain and suffering, if [15] any, which plaintiff alleges he sustained in said accident, and therefore deny the same; deny that plaintiff sustained general damages in the sum of \$70,000 or in any other sum by reason of any act or omission of the defendants or either of them; deny each and every and all remaining allegations of Paragraph VI.

VII.

Deny the allegations of Paragraph VII; deny that plaintiff sustained special damages in the sum of \$15,000 or in any other sum by reason of any act or omission on the part of defendants or either of them.

VIII.

Deny any knowledge or information sufficient to form a belief concerning the allegations of Paragraph VIII and therefore deny the same; deny that plaintiff sustained special damages in the sum of \$40,000 or in any other sum by reason of any act or omission on the part of the defendants or either of them.



## Second Defense

## I.

That at all times herein mentioned and particularly at the time and place of the accident which occurred on December 27, 1946, on U. S. Highway No. 20 at a point in Wyoming approximately 9 miles north of Worland, Wyoming, at the intersection of a dirt side road or farm road which crossed said U. S. Highway No. 20 in a general east and west direction and approximately at right angles thereto, there was a rise in said U. S. Highway No. 20 reaching a crest at a point approximately 500 feet north of the point of collision and of said intersection which prevented defendant's driver from seeing the point of collision and the approaching bus driven by the plaintiff at any point in excess of 500 feet northerly from the point of collision.

## II.

That at all times herein mentioned and particularly at the time and place of the accident on December 27, 1946, described in plaintiff's complaint, there was a wooden bridge with banisters thereto set at an angle on an S curve just south of said intersection [16] of said U. S. Highway No. 20 and the dirt or farm road, which said wooden bridge carried traffic on U. S. Highway No. 20 and enabled it to cross a large drain ditch parallel with and southerly from the said intersecting dirt or farm road; and that because of said S curve and the angle at which said bridge was constructed on said highway with wooden banisters it had the ap-

pearance of being a narrow bridge to drivers approaching from the north, and so appeared to the driver of defendant's vehicle.

### III.

That at all times herein mentioned, and particularly at the time and place of the accident on December 27, 1946, described in plaintiff's complaint, the said U. S. Highway No. 20 was covered with a very slippery coating of ice and packed snow for a distance of several miles south of Worland, Wyoming, to approximately 300 feet northerly from the point of collision involved in this accident; and that northerly on said U. S. Highway No. 20 and on U. S. Highway No. 310, intersecting therewith near Greybull, Wyoming, on the route and highway travelled by defendant to the scene of said accident for a distance of approximately 70 miles the said roadway and highway was clear of ice and packed snow, and that only a light patch here and there of snow was upon said highway at any point or place excepting only the last 300 feet northerly from the point of collision.

### IV.

That the plaintiff, in travelling northerly on said U. S. Highway No. 20 from Thermopolis to the point of said collision, had travelled upon said extremely slippery and icy roadway, and knew or should have known that it was unsafe to drive his bus at a speed in excess of 20 to 30 miles per hour, and that in disregard thereof he drove said bus at a speed of approximately 35 to 40 miles per hour, and was so

driving it when the respective vehicles being driven by the plaintiff and the defendant Hawkins approached each other and came in view of each other immediately preceding said collision. [17]

## V.

That to the south of the bridge on U. S. Highway No. 20 crossing said drain ditch at the intersection of the dirt roadway with said U. S. Highway No. 20 there were two turnouts, one approximately 100 feet south of said bridge and the other approximately 200 feet south of said bridge, both of which were travelable and the gates of which were down and open to traffic when passed by plaintiff immediately prior to said collision.

## VI.

That the plaintiff was driving said Burlington Bus in a northly direction on said U. S. Highway No. 20 at a high and dangerous rate of speed when taking into consideration the extremely slippery and icy condition of the highway upon which he was then travelling at the time the defendant Robert B. Hawkins came over the rise in the highway to the north of said road intersection and said bridge. That the defendant Hawkins was then driving his truck and the trailer hitched thereto in a careful and prudent manner on his own right or west side of said highway; that he observed that the Burlington Bus being driven by the plaintiff was not slackening its speed and that it appeared to him that unless he applied his brakes and slackened his

speed his truck and trailer would meet the Burlington Bus being driven by the plaintiff upon said narrow bridge, and determining that it was prudent so to do he applied his brakes and slackened the speed of his truck in an attempt to avoid meeting the bus driven by the plaintiff on what appeared to be a narrow bridge, not then knowing of the icy and slippery condition then existing under the light covering of snow which appeared to be on said highway at said place. That the application of said brakes on defendant's truck and trailer pulled thereby caused the same to jackknife when said vehicles were each approximately 250 feet from said bridge; that the plaintiff observed that defendant's truck and trailer had jackknifed and that in spite of said observation plaintiff continued to approach said bridge and towards said [18] intersection at a high and dangerous rate of speed. That the defendant Hawkins endeavored to straighten out the defendant's truck and the trailer hitched thereto, but that because of the extremely icy and slippery condition of said highway, and through no fault or negligence of the defendant Hawkins, he was unable to do so; but that he did succeed in getting his truck and trailer either stopped or practically stopped north of said bridge and before being hit by the plaintiff's bus. That the plaintiff wholly failed to properly reduce his rate of speed and to get his bus under control and carelessly, negligently, and recklessly drove said bus into the left side of defendant's tractor at about the middle thereof,

bursting the gas tank on the left side thereof and causing the collision in question.

## VII.

That said accident and collision were proximately caused or contributed to by plaintiff's own fault and carelessness as aforesaid in driving said bus at an unreasonable and excessive rate of speed while approaching the scene of said collision, in failing to have said bus under proper or sufficient control, in endeavoring to beat defendant to the crossing of said wooden bridge and in failing to stop his vehicle within a distance of 250 feet after knowing that defendant's truck was getting out of control, and in failing to drive his Burlington Bus off said highway into one of the two turnouts south of said wooden bridge.

GOPPERT AND HOUSEL,  
COLEMAN, JAMESON &  
LAMEY,

By CALE CROWLEY,  
Attorneys for Defendant,  
Fred M. Manning, Inc.

Receipt of copy acknowledged.

[Endorsed]: Filed U. S. D. C. April 1, [19] 1948.



[Title of District Court and Cause.]

## OPINION OF THE COURT

This is a civil action for damages for personal injuries suffered by plaintiff in a collision between a bus of the Burlington Transportation Company of which he was the driver, and a truck and trailer of Fred M. Manning, Inc., defendant herein, of which the defendant Robert B. Hawkins was the driver, which occurred on U. S. Highway No. 20, about 9 miles north of Worland, Wyoming, on December 27th, 1946. The case was tried to the court without a jury, and was submitted for decision upon briefs of counsel for the respective parties.

The court has endeavored carefully to weigh the evidence relating to this tragedy which resulted fatally to seven persons from shock and fire caused by the collision. The bus carried eighteen passengers who were entrusted to the care of the plaintiff, who was the driver in charge. In either direction from the scene of the accident, which occurred on Highway No. 20 about ten feet north of a bridge over a drainage ditch, the highway was straight-away and the visibility was good and the drivers of both vehicles had a clear view of each other as they approached the bridge, and from the evidence it appears the thought that they might pass each other at or on the bridge was in the minds of both drivers; the heads of both drivers were at an elevation of about seven feet above the roadway so that each had a clear and unobstructed view.

The truck and trailer were going south and the

bus traveling north, and the roadway was covered with snow and ice; this condition prevailed all the way north from Worland to the bridge and beyond; there is conflict in the testimony as to the extent of [20] the snow and ice north of the bridge; the driver of the truck asserts that he suddenly and abruptly encountered snow and ice about 425 feet north of the bridge, but before he struck the icy condition he said he could see the snow on the bridge, and that when he reached the ice the truck and trailer began to swerve and skid and afterwards go out of control, and the trailer skidded across the road to the east side, but he said that he was gaining control and had the truck headed towards the west side—his side of travel—when the bus crossed the bridge and collided with the truck. Both drivers knew there was snow and ice and slippery conditions underneath their vehicles. The driver of the bus knew the conditions and had known them for a distance of 9 miles south of the bridge and also that care and caution would be required to insure the safety of his passengers, and he must have seen the threatening situation and the possible danger of a meeting on the bridge, especially when he observed the trouble the driver was having with his truck and trailer.

Both drivers had the duty of proceeding with reasonable care and caution. One driver had a heavy truck and trailer weighing about 38,000 pounds to control on snow and ice, while the other driver had a large bus weighing 21,600 pounds to control, also on snow and ice. It would seem that when such ve-

hicles—enormous in size and weight—are about to meet on a bridge when traveling over an icy, slippery highway that great care should be observed not only for the safety of the drivers themselves but for the protection of members of the public generally whose safety may be endangered. The driver of the truck should have seen and prepared himself and his equipment for conditions confronting him that might prove dangerous, and the driver of the bus should have seen and understood the situation facing the driver of the truck and trailer and should have come to a full stop before crossing the bridge; according to the evidence he could have stopped had he acted promptly upon appearances in full view, and it was his duty to do so and not risk the hazard of meeting the truck and trailer on the bridge—especially so when the driver of the truck was in trouble; both could see the danger ahead when they were [21] 800 to 1,000 feet apart, and should have slowed down and stopped; both were experienced drivers and familiar with highway No. 20, and could see the turn-outs and might have avoided the accident in that manner; but the handicap to control seems to have been the excessive speed at which both heavy vehicles were traveling over a dangerous highway. The violence of the impact is evidence of the speed both vehicles had been going before the accident; the serious injuries received by both drivers and the damage to both vehicles in the impact, and the shock and fatal injuries to some of the passengers are circumstances that disclose excessive speed and lack of proper control.



Experts testified that both vehicles were in good mechanical condition before the accident; that they had been thoroughly examined and checked for any defects and none were found, so that no good reason appears why those experienced drivers could not have kept them under control at a time when they saw danger ahead, and both vehicles were distant about three blocks from each other, and both machines and the brakes thereon were in good working order.

At or near the Sam Piel driveway Mr. Brownell said he was going about 35 miles an hour, and at the moment of impact about 15 miles. After the first swerve of the on-coming truck and trailer he said that he might have pulled off right at the Piel driveway, if he had realized that the other vehicle was going out of control, but would have been taking a chance of going into the drainage ditch; he estimated the speed of the Manning vehicle at 50 miles per hour; he said the roadway was all ice from Worland to scene of the accident—ice with snow on top; he said he was traveling about 35 miles an hour from Worland to scene of accident, at another time in testifying he estimated his speed at 35 to 40 miles an hour over the same course. Does it appear from the evidence that a proper outlook was maintained on the part of either driver, or that either seemed fully to appreciate existing conditions, not only when they came in full view of each other, but before that, when they knew they were traveling over a bed of ice and snow, and should have regulated their speed to conform to

conditions and thus be able to maintain proper control of their [22] heavy equipments in preparation for any emergency that might arise at any time in traveling over the public highway when road conditions are fraught with danger? It was plainly discernible from the appearance of both drivers on the witness stand that both were intelligent witnesses and the evidence shows that they were experienced drivers of heavy vehicles—such as are found in this case—over the public highways under all sorts of weather conditions, during long periods of service; it appears from the testimony of the drivers that the bus was going from 35 to 40 and the truck and trailer from 40 to 45 miles per hour when the drivers sighted each other and were then from 850 to 1,000 feet apart, or about three blocks.

The court is not accepting the evidence which would require a belief that there was a sudden, abrupt and unforeseen change from clear dry black top to snow and ice at the particular spot designated; the truck driver admits he saw the snow covered bridge, and disinterested witnesses who live there and travel the road frequently disclose by their testimony that no such condition existed at the time of the accident—and both drivers were admittedly aware that they should avoid a meeting at the bridge, which appeared to be narrow because of a slight angle to the roadway, and both failed to have their respective vehicles under proper control. The evidence shows that the bus was traveling at the rate of 30 miles an hour just before it reached the bridge and the collision occurred about

ten feet beyond the bridge which was about 20 feet long.

From the foregoing facts and enlightening circumstances the court feels obliged to conclude that the negligence of both drivers furnished a proximate cause of the collision of the two vehicles and the consequent damages, injuries and loss of life. After hearing the testimony of physicians and surgeons in respect to their services in behalf of the plaintiff there can be no question that he was severely injured in the collision, that the driver of the truck and trailer was also injured and thereafter hospitalized, and, furthermore, that several passengers in the bus lost their lives in the accident, all of which is to be deeply regretted, but these lamentable facts do not relieve the Judge of his serious [23] duty to determine the responsibility for this tragic occurrence by resolving the evidence and attending circumstances to the best of his judgment and ability, and for any error committed the learned members of the higher tribunal will readily find and apply the correct solution.

During the trial of this case counsel questioned witnesses as to their testimony given on the trial of civil causes the week before, arising out of the same accident; the cases referred to by counsel were entitled *Mary V. Hennessey*, as administratrix of the estates of *Lois Lorene Foster* and *Violet Mae Stotts*, deceased, against the *Burlington Transportation Company* and *Fred M. Manning, Inc.*, consisting of

four actions for damages which were consolidated for trial, and in which the court found for the plaintiff.

Where a skidding automobile leaves its side of the road and passes over the center of the highway and into the traffic lane of vehicles traveling in the opposite direction, and "such skidding results from negligent acts and omissions of the driver, he is not absolved from the consequences of breach of the rule, although it is not deliberate or intentional \* \* \*." And it was further held in the same case: "Where its skidding results from his negligence, the doctrine of 'unavoidable accident' may not be invoked to exempt liability for the consequences. *Wallis v. Nauman*, 157 Pac. (2) 285, Wyo.; 259 Ky. 286, 82 S.W. (2) 364, 366. There seems to be no doubt that the speed of the two heavy vehicles over the icy road negligently contributed to the violence of the collision which caused the tragedy that followed. *Pacific Greyhound Lines v. Rume*, and *Pacific Greyhound Lines v. Rhodes*, 178 Fed. (2) 652, 9th Circuit.

From what has heretofore been stated it should plainly appear that in the opinion of the court the plaintiff has not sustained the allegations of the complaint by a preponderance of the evidence, and, furthermore, that he would not be entitled to recover because of his own contributory negligence which proximately caused the collision and injuries thereby sustained. Findings of fact and [24] conclusions of law may be submitted and form of



judgment. Each side to pay its own costs. Exceptions allowed plaintiff.

CHARLES N. PRAY,  
Judge.

[Endorsed]: Filed April 22, 1950. [25]

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[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

The above-entitled cause came on regularly for trial before the court, sitting without a jury, at Billings, Montana, on May 16, 17, 18 and 19, 1949, trial by jury having been waived by Stipulation of counsel in open court. Thomas C. Colton, Esq., and Messrs. Davis, Michel, Yaeger and McGinley, represented by Philip Lush, Esq., appeared for the plaintiffs, and Ernest J. Goppert, Esq., Jerry W. Housel, Esq., Karl F. Crass, Esq., and Messrs. Coleman, Jameson & Lamey, represented by W. J. Jameson, Esq., and James M. Haughey, Esq., appeared for the defendant, Fred M. Manning, Inc., no service having been made upon the defendant, Robert B. Hawkins. After the trial briefs were filed by the respective parties. The court having considered fully the evidence introduced at the trial on behalf of the respective parties, and the briefs filed by counsel, and now being fully advised in the premises, the court hereby makes the following findings of fact and conclusions of law:

## Findings of Fact

## I.

That at all times herein mentioned, the plaintiff in the above-entitled cause was a citizen of the State of Wyoming; that the defendant, Fred M. Manning, Inc., was a corporation duly organized and existing under the laws of the State of Oklahoma; and that the amount involved in this suit exceeds the sum of \$3,000.00, exclusive of interest and costs.

## II.

That on December 27th, 1946, the plaintiff, Ernest B. Brownell, [26] was operating a bus of the Burlington Transportation Company, a common carrier for hire, in a northerly direction from the town of Worland, Wyoming, over U. S. Highway No. 20; that the defendant Robert B. Hawkins was operating a truck of the defendant Fred M. Manning, Inc., in a southerly direction on said highway; and that about 2:00 o'clock p.m. said vehicles collided at a point on said highway about nine miles north of Worland, Wyoming, about 10 feet north of a bridge on said highway over a drainage ditch.

## III.

That the bus so operated by the plaintiff was a large bus weighing 21,600 pounds unladen, and was carrying 18 passengers and that the truck operated by the defendant was a heavy truck and trailer weighing about 38,000 pounds.

## IV.

That the highway was straight-away and the visibility was good; that both drivers had a clear and unobstructed view of each other as they approached the bridge; that the heads of both drivers at the drive wheel of their respective vehicles were at an elevation of about 7 feet above the roadway; and that it appears from the evidence that the thought that they might pass each other at or on the bridge was in the minds of both drivers.

## V.

That the roadway was covered with snow and ice all the way north from Worland to the bridge and beyond that both drivers knew there was snow and ice and slippery conditions underneath their vehicles; and that plaintiff had known these conditions for a distance of nine miles south of the bridge.

## VI.

That both drivers could see the danger ahead when 850 to 1,000 feet apart and both should have slowed down and stopped before colliding with each other; that both drivers were familiar with highway No. 20 and could see turnouts thereon and could have avoided the collision by using [27] them.

## VII.

That both drivers were admittedly aware that they should avoid a meeting on the bridge, which appeared to be narrow because of a slight angle with the roadway; that both drivers failed to have



their respective vehicles under proper control; that the truck and trailer operated by the defendant Hawkins began to swerve and skid and afterwards went out of control, and the trailer skidded across the road to the east side, where the truck and bus collided about ten feet north of the bridge; and that plaintiff must have seen the threatening situation and the possible danger of meeting on the bridge, especially when he observed the trouble defendant Hawkins was having with his truck and trailer.

#### VIII.

That both vehicles were in good mechanical condition before the accident; that they had been recently examined and checked thoroughly for any defects and none were found; that the brakes thereon were in good working order; and that the respective drivers could have kept their vehicles under control at the time when they saw danger ahead and were about three blocks distant from each other.

#### IX.

That the driver of defendant's truck should have seen and prepared himself and his equipment for conditions confronting him that proved dangerous, and the plaintiff should have seen and understood the situation facing the driver of the truck and trailer and should have come to a full stop before crossing the bridge, and could have done so had he acted promptly upon appearances in full view; and that it was his duty to do so and not risk the hazard of meeting the truck and trailer on the

bridge after he had seen the driver of the truck was in trouble.

### X.

That the bus driven by plaintiff was traveling from 35 to 40 miles an hour and the truck and trailer driven by the defendant Hawkins was traveling from 40 to 50 miles an hour when the drivers sighted each other and were 850 to 1,000 feet, or about 3 blocks, apart; that the bus was traveling at the rate of [28] 30 miles an hour just before it reached the bridge and the collision occurred about 10 feet beyond the bridge, which was about 20 feet long; that both vehicles were traveling at an excessive rate of speed in view of the icy and dangerous condition of the highway, and the impact of the collision of the two vehicles was violent.

### XI.

That plaintiff did not exercise ordinary care on his part in the following particulars:

(a) While approaching the point of collision plaintiff did not have the bus he was driving under proper control and drove the same without due caution and at an excessive rate of speed in view of the hazards which existed by reason of the slippery condition of the highway.

(b) Plaintiff did not maintain a proper lookout when approaching the point of collision, when had he looked he could have observed defendants' truck out of control on the highway and could have stopped the bus he was driving and avoided said collision.

(c) Plaintiff failed to slow down or slacken the speed of the bus he was driving and bring the same under proper control when the approaching truck of the defendant was in plain sight and it appeared likely the vehicles would meet at or near said bridge.

## XII.

That the negligence of the plaintiff and the defendant Hawkins in the particulars hereinabove set forth was the proximate cause of the collision of the two vehicles, and the consequent injuries suffered by the plaintiff and the defendant Hawkins.

## XIII.

That plaintiff's own contributory negligence proximately caused the collision, and injuries thereby sustained.

## XIV.

That plaintiff has failed to sustain the material allegations [29] of his complaint by a preponderance of the evidence.

## Conclusions of Law

From the foregoing Findings of Fact, the court makes the following Conclusions of Law.

### I.

That this court has jurisdiction of the above-entitled action.

### II.

That the negligent acts and omissions of the plaintiff and the defendant Robert B. Hawkins

were the proximate cause of the collision of the two vehicles and the consequent injuries suffered by the plaintiff.

III.

That plaintiff is not entitled to recover from the defendant, Fred M. Manning, Inc., because his own contributory negligence proximately caused the collision and the injuries thereby sustained.

Let the judgment of this court be entered in accordance with these findings and conclusions.

Done this 1st day of May, 1950, by the court.

CHARLES N. PRAY,

Judge.

[Endorsed]: Filed May 1, 1950. [30]

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In the District Court of the United States for the  
District of Montana, Billings Division

Case No. 1043

ERNEST B. BROWNELL,

Plaintiff,

vs.

FRED M. MANNING, INC., and ROBERT B.  
HAWKINS,

Defendants.

JUDGMENT

Be It Remembered that the above-entitled cause came on regularly for trial in the above-entitled court at Billings, Montana on May 16, 1949. The plaintiff was represented by his attorneys, Thomas C. Colton, Esq., and Philip Lush, Esq., and the

defendant, Fred M. Manning, Inc., was represented by its attorneys, Ernest J. Goppert, Esq., Jerry W. Housel, Esq., W. J. Jameson, Esq., and James M. Haughey, Esq. The defendant, Robert B. Hawkins, had not been served and did not appear as a party defendant, at said trial.

A trial by jury having been expressly waived by the respective parties the cause was tried before the court sitting without a jury; whereupon witnesses on the part of the plaintiff and defendant were duly sworn and examined and documentary evidence and exhibits were introduced in evidence by the respective parties; the evidence being closed the cause was submitted to the court for consideration and decision, after briefs filed by the respective parties. The court having heard the testimony and having examined the proofs offered by the respective parties and having considered the briefs and arguments of counsel, now being fully advised in the premises and having filed herein its Findings of Fact and Conclusions of Law, and having directed that judgment be entered in accordance therewith,

Now, Therefore, by reason of the law and findings aforesaid, It Is Hereby Ordered, Adjudged and Decreed that the plaintiff have and recover nothing from the defendant, and that each side pay its own costs.

Done this 1st day of May, 1950.

CHARLES N. PRAY,  
Judge.

[Endorsed]: Filed and entered May 1, 1950. [31]



[Title of District Court and Cause.]

NOTICE OF MOTION

To the Above-Named Defendant, Fred M. Manning, Inc. and to Its Attorneys, Ernest J. Goppert, Esq., Jerry W. Housel, Esq., Karl F. Crass, Esq., and Messrs. Coleman, Jameson & Lamey:

You, and Each of You, Will Please Take Notice that at a special term of the above-named court to be held at Billings, Montana, on the . . . . day of May, 1950, at ten o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, the Plaintiff will move the court for an order amending the findings of fact herein, dated May 1, 1950, as follows:

1. By adding the following finding of fact: "That the truck operated by the Defendant skidded from its side of the road and passed over the center of the highway and into the traffic lane of the bus being operated by the Plaintiff; that such skidding resulted from the negligent acts and omissions of the Defendant's driver, Robert B. Hawkins; that such negligence of the Defendant was the sole proximate cause of the resulting collision between the truck operated by the Defendant and the bus operated by the Plaintiff."

2. By adding a finding of fact setting forth the amount of the damage occasioned to the Plaintiff in said collision.

3. By otherwise amending the findings of fact

and conclusions of law and the judgment entered herein so as to conform with the proposed amended findings of fact above set forth. [32]

Said motion will be made upon all the files, records, and proceedings herein and upon the following grounds:

1. That the findings of fact and conclusions of law are contrary to and not justified by the evidence adduced upon the trial herein;

2. That the findings of fact and conclusions of law are contrary to law;

3. That the proposed amendments to said findings of fact and conclusions of law are necessary to conform the same to the evidence adduced upon the trial herein and to the law applicable thereto.

You, and Each of You, Will Further Please Take Notice that at said time and place aforesaid, in the event that the foregoing motion for amended findings of fact and conclusions of law and judgment is denied, the Plaintiff will move the court for an order vacating and setting aside said findings of fact and conclusions of law and vacating and setting aside the judgment herein, and granting to Plaintiff a new trial in this action.

Said motion will be made upon all the files, records, and proceedings herein and upon the following grounds:

1. That the findings of fact are contrary to and not justified by the evidence adduced upon the trial herein;



2. That the findings of fact are contrary to law;

3. That the conclusions of law are contrary to the evidence adduced upon the trial of the above-entitled action and are not sustained thereby and are contrary to law; and

4. That the interests of justice require a new trial.

Dated this 9th day of May, 1950.

/s/ THOMAS C. COLTON,

DAVIS MICHEL YAEGER &  
McGINLEY,

Attorneys for Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 11, 1950. [33]

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[Title of District Court and Cause.]

OPINION AND ORDER DENYING MOTION  
TO AMEND FINDINGS OF FACT

Plaintiff's motion for amended findings or for new trial came on regularly for hearing on oral argument and on briefs submitted by counsel for the respective parties, all of which were presented to the court in an able manner and with an exhaustive discussion of the fact situation and review of many of the law points heretofore submitted.

The court has endeavored carefully to consider

the facts, authorities, and arguments presented, which was also done by the court after the trial on the merits. As was stated in the ruling on the motions for new trial in the Hennessey cases, relating to the same accident, the court has been unable to find any new matter of sufficient importance to cast doubt on the correctness of the decision, findings and conclusions heretofore rendered in said cause. Whether the court is correct in so holding will not be known until a review can be had by higher authority. As the court understands the facts and law deemed applicable, to grant a new trial would unnecessarily delay proceedings and postpone to an unreasonable extent the final outcome of the case. In view of the foregoing situation, being duly advised, and good cause appearing therefor, the court is of the opinion that the said motion should be denied, and such is the ruling of the court herein. Exceptions allowed counsel.

CHARLES N. PRAY,  
Judge.

[Endorsed]: Filed December 15, 1950. [35]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Ernest B. Brownell, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the judgment entered in the foregoing action on the 1st day of May, 1950, that the plaintiff have and recover nothing from the defendant Fred M. Manning, Inc.

Dated this 10th day of January, 1951.

THOMAS C. COLTON,

DAVIS, MICHEL, YAEGER &  
McGINLEY,

By SIDNEY S. FEINBERG,  
Attorneys for Plaintiff.

SIDNEY S. FEINBERG,  
Minneapolis, Minnesota,  
Of Counsel.

[Endorsed]: Filed January 11, 1951. [36]

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[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men by These Presents: That we, Ernest B. Brownell, as principal, and Maryland Casualty Company, as surety, are held and firmly bound unto Fred M. Manning, Inc., in the above-

entitled action in the sum of Two Hundred Fifty Dollars (\$250.00), lawful money of the United States, to be paid unto the said Fred M. Manning, Inc., its successors or assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, assigns and successors, firmly by these presents.

The condition of this obligation is such that, whereas, the said Ernest B. Brownell appeals to the United States Court of Appeals for the Ninth Circuit from the judgment entered in this action on the 1st day of May, 1950.

Now, Therefore, if the said Ernest B. Brownell shall make payment of costs if the appeal is dismissed or the judgment affirmed or of such costs as the Appellate Court may award if the judgment is modified, then this obligation shall be void, otherwise of force.

ERNEST B. BROWNELL,

By PHILIP B. LUSH,

His Attorney-in-Fact.

[Seal]

MARYLAND CASUALTY  
COMPANY,

By E. G. DAVIS, JR.,

Its Attorney-in-Fact.

In presence of:

A. PAYTAS,

A. HAGGENMILLER.

[Endorsed]: Filed January 11, 1951. [38]

[Title of District Court and Cause.]

POINTS RELIED ON FOR REVERSAL

Plaintiff-appellant will rely upon the following points for reversal of the decree and final judgment of the trial court:

1. That the trial court erred in its decision and the findings of fact, conclusions of law and order for judgment entered thereon and that the trial court erred in its denial of the motion of plaintiff to amend said findings of fact and conclusions of law or for a new trial for the following reasons:

(a) That the evidence does not sustain the finding that plaintiff was guilty of any negligence.

(b) That if the evidence does sustain the finding that plaintiff was guilty of any negligence it appears, as a matter of law, that any such negligence was not a proximate or contributing cause of the accident and the injuries sustained by plaintiff.

Dated this 9th day of February, 1951.

THOMAS C. COLTON,

DAVIS, MICHEL, YAEGER &  
McGINLEY,

By SIDNEY S. FEINBERG,  
Attorneys for Plaintiff.

SIDNEY S. FEINBERG,  
Of Counsel.

[Endorsed]: Filed February 12, 1951. [40]

In the District Court of the United States, in and  
for the District of Montana, Billings Division

Civil Action No. 1043

ERNEST B. BROWNELL,

Plaintiff,

vs.

FRED M. MANNING, INC., et al.,

Defendant.

Before: Honorable Charles N. Pray,  
United States District Judge, Without a  
Jury, at Billings, Montana, on May 16th,  
17th, 18th and 19th, 1949.

## TRANSCRIPT OF TRIAL

### APPEARANCES

For Plaintiff:

MR. THOMAS C. COLTON,

Attorney at Law,

Billings, Montana.

DAVIS, MICHEL, YAEGER & MCGINLEY,

160 Baker Building,

Minneapolis, Minnesota, by

MR. PHILIP LUSH.



For Defendant:

COLEMAN, JAMESON & LAMEY, by  
MR. WILLIAM JAMESON, and  
MR. JAMES HAUGHEY,

Attorneys at Law,  
Billings, Montana.

MR. ERNEST J. GOPPERT, and  
MR. JERRY HOUSEL,

Attorneys at Law,  
Cody, Wyoming.

MR. KARL F. CRASS,  
Attorney at Law,  
Denver, Colorado. [45]

Be It Remembered, That the above-entitled cause came on regularly for hearing in the United States District Court in and for the District of Montana, Billings Division, in the Federal Building, at Billings, Montana, on May 16th, 17th, 18th, and 19th, 1949, before the Honorable Charles N. Pray, sitting without a jury.

Whereupon, the following proceedings were had and done, to wit:

The Court: Gentlemen, we have a case set for trial, No. 1043, Earnest B. Brownell vs. Fred M. Manning, Inc., and others. I believe there was a verbal understanding that this case would be tried before the court without a jury; have you entered



into any stipulation to that effect, and filed it of record, Mr. Colton?

Mr. Colton: The trial may proceed without a jury, your Honor. We didn't ask for any jury.

The Court: I understood some of you told me verbally you wanted to try it without a jury?

Mr. Colton: Yes.

The Court: And now I am inquiring whether you have entered into a stipulation to that effect and filed it in the record so we will have something to refer to later on.

Mr. Jameson: If the court please, I don't believe there has been a stipulation. May the record show now the two parties stipulated the case may be tried then without a jury [50] before the court.

The Court: Very well.

Mr. Colton: At this time, your Honor, I move the admission of Philip C. Lush, who is admitted to practice in all the courts of his State, both State and Federal, and of the firm of Davis, Michel, Yaeger and McGinley, 160 Baker Building, Minneapolis, Minnesota.

Mr. Jameson: And may it please the court at the same time I move the admission of Karl F. Crass, of the Bar of Colorado, who has been admitted to the Federal and State Courts of Colorado.

The Court: Very well, you gentlemen may all be admitted here for the purposes of this suit.

Mr. Jameson: If the court please, I am not sure whether Mr. Goppert's admission will include this

case; if not, I move the admission of Mr. Goppert.

The Court: We will admit Mr. Goppert.

The Court: Now, gentlemen, do you desire to make a brief statement on the part of each side before we proceed to take testimony?

Mr. Jameson: May it please the court, before proceeding with the statements we would like to have an amendment to our answer by interlineation, and that is I now move the court that in the defendant's answer the following be substituted for lines 12 to 14, inclusive, on page 1. Comes now [51] the defendant Fred M. Manning, Inc., defendant in the above-entitled action, and for its separate answer to plaintiff's complaint herein, admits, denies and alleges. And also on page 6 in line 8 that the words "defendant Fred M. Manning, Inc.," be substituted for the word "defendants." In explanation of that when I made that by inadvertence we appeared for the other defendant, Mr. Hawkins. He wasn't served in this action and in all of the preliminary papers, the removal to this court and all other papers, we appeared only for the defendant Manning, but when the answer was filed through mistake we appeared for both the defendants rather than for the one defendant.

Mr. Colton: We have no objection to the amendment, your Honor.

The Court: Very well, the amendment will be made accordingly.

Mr. Lush: If the court please, I would like to have an amendment to plaintiff's complaint in this action; paragraph 8 of said complaint on page 4,

the last page of the complaint, substituting for the words "Forty Thousand Dollars" the words "Eighty Thousand Dollars," your Honor, for loss of wages suffered by the plaintiff in the future.

The Court: Any objection?

Mr. Goppert: If the court please, we want to object to that. [52]

The Court: I suppose the prayer says \$80,000?

Mr. Goppert: No, the prayer says one hundred twenty-five and that amendment would make it one hundred sixty-five.

Mr. Lush: If the court please, we will be able to show loss of wages of the plaintiff in the future of approximately \$80,000.

The Court: No objection? You haven't made any objection, have you?

Mr. Goppert: We want to object to that, your Honor, at this time.

The Court: All right, the amendment may be made accordingly. You may proceed, gentlemen.

Mr. Lush: If the court please, this action arises out of a collision between a truck and trailer combination owned and operated by the Fred M. Manning Company through their driver and servant, Hawkins, and a Burlington Trailways Bus on Highway 20 nine miles north of Worland. The plaintiff has alleged and will show that at all times the driver of the bus, Brownell, the plaintiff herein, was operating his bus with due care and as a careful, prudent man should operate a bus at that time and under those circumstances.

Plaintiff will further show that the defendant

through its agent and servant, Hawkins, operated the truck and trailer combination, or tractor-trailer combination, in a careless, reckless and negligent manner. The evidence will [53] show, your Honor, that the defendant's truck on approaching a point about nine miles north of Worland began to skid on a slippery icy road, straightened up, skidded again, and then straightened up, and skidded a third time across the highway and into the path of the oncoming bus.

There will be evidence, your Honor, to show that the highway north of the scene of the accident for a period of several miles was covered with ice and snow. There will also, I believe, be contrary testimony. I only bring that point up, your Honor, because the plaintiff does not feel that it is incumbent upon him in proving this case to prove conclusively that that highway was icy, nor does he depend upon the icy condition of the highway nor weather as a part of his case. There will also be evidence to the effect that the brakes on the trailer were either defective or inoperative. Again plaintiff only brings up this matter because he believes there will be contrary evidence and because he believes that his case does not depend, does not stand or fall upon whether or not the brakes of the trailer were operative or inoperative; whether the brakes were operative or inoperative, whether the highway or scene of the accident was icy or not icy, the defendant through its agent and servant, Hawkins, drove his truck in such a careless, reckless and negligent manner that it was



caused to run into and did strike the bus driven by the plaintiff Brownell. In this accident Brownell was severely damaged; he [54] was severely and permanently injured; he will never be able to work again at any field that he is familiar with or any field he is trained in. He has permanently lost the use of his left leg, and he is seriously crippled in the use of his right leg. He has lost very much the use of his hands. He suffered a fracture of the skull. He suffered severe bruises, burns and others. We are going to ask the court in this case to give us a very substantial verdict, the type of verdict that will recompense this man for all the pain and suffering he has gone through, for all the wages he has lost, and for all that he will suffer in the future, not only the loss like for medical expenses and entertainment for this man but more or less damaging losses that will come to him because he is totally and permanently disabled and crippled. Thank you.

Mr. Goppert: If the court please, gentlemen, the evidence of the defendant in this case will confirm that there was a terrible accident that took place about nine miles north of Worland on the afternoon of December 27th, 1946. It will show that a truck that was operated by Mr. Robert B. Hawkins for the Manning Company, which was a semi-trailer outfit, was headed southward on that highway being driven by Robert B. Hawkins, collided with a Burlington bus, which was headed northward on the same highway, the bus having approximately 22 passengers, and that they came

to a place of meeting at approximately a bridge that crosses an irrigation or drain [55] ditch that goes across this highway in an east and west direction, the highway itself generally being north and south at the scene of the accident. The plaintiff will be the driver of the Burlington bus. It will show that this Burlington bus was being driven by the plaintiff entirely in his charge and control at a speed of approximately 40 miles per hour. I believe the evidence will show that that was too fast a speed on the very icy snow-covered roadway that he had been traveling from Thermopolis, Wyoming, to the scene of the accident, and that the stopping distance of his vehicle at the speed he was going on that roadway would be from four to five hundred feet. The evidence will show that the truck operated by the defendant or on behalf of the defendant by Mr. Hawkins was a new West Coast Special truck on its maiden trip, as it were, equipped with good brakes that had been tested at the—both the truck and the trailer had been tested as to connections and brakes at the garage of the defendant company in Casper, Wyoming, about three days before this accident. The last test by the Wyoming State Highway Patrol on a stopping test at a point approximately two miles north of Basin, Wyoming, about thirty minutes or forty minutes before the accident, being at a point about 20 miles north of this collision, and the evidence will be that the brakes were then in good working order.

Our evidence will show that the road which was



traveled by Mr. Hawkins and the Manning equipment up to a point [56] five or six hundred feet north of this point of meeting was free of any dangerous hazards such as ice or snow, and that a person coming into the same from the north as the driver of the Manning truck approached didn't have any warning or notice of bad road conditions in front of him, and that he came on to the scene of this accident without the knowledge that there was ice or snow on that highway that would present any hazard or danger to him. And it will show that when the bus and the truck reached a point approximately 450 feet each from this bridge that the trucker believed, the truck driver believed it would be more safe not to pass on this bridge, and observing as he did it seemed that they would meet and pass on the bridge if he didn't slacken his speed—I should have said he was driving approximately 35 miles per hour with a bus that had a regulator or governor on it that controlled its speed to under 45 miles per hour—it will show that he then applied the hand brake that controlled the airbrake on the trailer, and observing that the trailer didn't slacken his speed as much as he believed it should he then discovered he was on snow covered ice and believed that he should use more brakes to endeavor to stop his equipment in order to prevent the meeting on this bridge he applied then the footbrake, which the evidence will show was connected to both the truck and trailer, and that he did it in the accepted and approved method of attempting to control vehicles that are on [57]

ice, which is tapping on the power as it is called, and some of them may call it fanning of the brake. And it will show that he had considerably slackened his speed until he came to a place that was apparently a rough spot in the road when the tractor portion of his outfit went out of control and skidded toward the southeast. And the evidence will show that it skidded—he thought it was going to go over in the barrow pit on the east side of the highway but before he reached that point the bus had crossed the bridge and was then approximately on him, hit his tractor, which was then turned toward the northeast and the front end towards the southwest and skidding across the road sideways. It will show that the bus in the left front corner of it hit approximately the middle of the left side of the tractor, and as unfortunate circumstances would make it, it hit the gas tank of that vehicle. These West Coast Specials being equipped with side tanks, one on each side that extend from approximately the rear end of the cab to the back wheel. And it will disclose that a fire happened afterwards. It will show that the trucker had released his throttle when he put his foot on the brake, and it will show that he did everything that he knew to prevent that accident. I believe after the court has heard all the evidence you will come to the conclusion that the accident itself was an unavoidable accident, one that happened in spite of everything that the defendant could do or could reasonably [58] be expected to do to prevent such an accident.

The Court: Call your first witness.

Mr. Lush: I will call Earnest B. Brownell.

EARNEST BYRON BROWNELL

plaintiff, was called as a witness, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lush:

Q. Will you state your full name, please?

A. Earnest Byron Brownell.

Q. Where do you live, Mr. Brownell?

A. 1020 Big Horn, Worland, Wyoming.

Q. And what is your age?

A. Thirty-seven.

Q. And what was your age on the date of this accident?

A. Thirty-five.

Q. Are you married, Mr. Brownell?

A. Yes.

Q. And do you have any children?

A. One daughter.

Q. And how old is that daughter?

A. Five, six years old.

Q. What was your occupation immediately prior to the happening of this accident, Mr. Brownell?

A. Bus driver.

Q. And for whom did you drive? [59]

A. Burlington Trailways.

Q. How long had you driven for the Burlington Trailways?

A. Three years and three months.

(Testimony of Earnest Byron Brownell.)

Q. And had you always held the run that you were working on on that particular day?

A. No.

Q. When had you started working on that particular run?           A. The 15th of December.

Q. Now on the day of this accident in the afternoon were you driving your bus in a northerly direction out of Worland?           A. Yes.

Q. And on what highway is that?

A. That is Highway 20.

Q. U. S. 20?           A. That is right.

Q. And as you approached the scene of the accident did you observe another vehicle coming at you from the north, coming toward you from the north?           A. Yes.

Q. Now when did you first start to pay attention to this other vehicle?

A. As I was almost to the Sam Piel driveway.

The Court: Have you accepted that map?

Mr. Lush: We have stipulated to it, your Honor.

Mr. Goppert: To put the preliminary in, don't you think we better stipulate on these: It is hereby stipulated between the parties hereto that the map and plat marked Plaintiff's Exhibit 1 is a map drawn to scale of one inch equals one [60] hundred feet, showing the objects that are listed thereon, and that each and every object listed thereon is shown in its proper place as determined by a survey, and that the upper half is a cross-section of the map showing the grade of the highway, which is located on the lower half of the same

(Testimony of Earnest Byron Brownell.)

exhibit, and that the grades appear by percentage on the upper portion, and that the other objects shown on the upper portion such as the culvert and the drain ditch and bridge banister are likewise drawn to the scale, the up and down scale being one inch equals ten feet, and the horizontal scale being the same as on the other portion of the map, one inch equals one hundred feet. The north direction is shown by a conventional sign on the map.

The Court: North is to the right?

Mr. Lush: To the right, yes, your Honor.

Mr. Lush: I think we also stipulated on that telephone pole.

Mr. Goppert: And it is stipulated that the telephone post marked telephone pole in the northwest corner of section nine was not in place at the time of the accident; it has been placed there since. That is all the stipulating at this time, if the court please, unless they would want something else stipulated.

The Court: Anything to add to it or is that satisfactory?

Mr. Lush: I think that covers it, your [61] Honor.

Mr. Goppert: If it would be more convenient to the court, we have another copy the court could use if he wishes.

The Court: I will see how it goes. That is a pretty good map.

Q. (By Mr. Lush): Mr. Brownell, will you



(Testimony of Earnest Byron Brownell.)

point out here on that map the Sam Piel driveway approach that you mentioned?

A. (Indicating.)

Q. And as you approached the Sam Piel driveway can you point out on that map approximately where the other vehicle was that you saw approaching you?

A. Right there.

The Court: What point is that?

Mr. Lush: That is a point that is shown as an irrigation lateral on the map.

Q. And is the Sam Piel driveway the first driveway from the south that is on the south side of the road? Coming from the south on the east side of the road that appears on the map?

A. Yes, that is right.

The Court: You mean coming from the south that driveway would be on the west side, wouldn't it?

Mr. Lush: No, your Honor, if he was headed north on his right would be the east.

The Court: The other side would be the west. Oh, you are pointing to that one.

Mr. Lush: He is pointing to this one here. [62]

Q. Will you mark on the map with the letter "A" the Sam Piel driveway, please? And will you mark with the letter "B" the point at which you stated you first saw or you first paid attention to the vehicle approaching from the opposite direction?

Mr. Lush: That is the irrigation lateral.

Q. Does that map show how far south of the



(Testimony of Earnest Byron Brownell.)

center of the drainage ditch that the center of the Sam Piel driveway is located?

A. Yes, that is 165 feet.

Q. And does that map show the distance from the center of the irrigation ditch to the center of the Martin Lamb driveway?

A. Yes, that is 250 feet.

Q. Will you mark with the letter "C" the Martin Lamb driveway?      A. (Marking.)

Q. And how far north of the Martin Lamb driveway is the spot that you have indicated where you first started to pay attention to the other vehicle?

A. That is 40 feet according to this.

Q. I don't believe it actually shows on the map. You will have to estimate the distance, Mr. Brownell, unless we can determine it from the cross section up there.

A. Could I have that again please?

Q. Can you estimate—pardon me——

Mr. Lush: Do these correspond point for point, Mr. Goppert?

Mr. Goppert: Yes. [63]

Mr. Lush: They do correspond point for point? Now from an examination of this and we stipulated it is practically 425 feet from the north end of the bridge?

Mr. Goppert: 425.

Mr. Lush: We have stipulated it is approximately 425 feet from the north edge of the bridge to the high point of the road which was the irrigation lateral, your Honor.

(Testimony of Earnest Byron Brownell.)

The Court: Where he first noticed the approaching vehicle.

Mr. Lush: Where he first paid particular attention to it, your Honor, yes.

Q. When you first observed the vehicle approaching from the other direction when you first started to pay attention to it what called your attention particularly to it?

A. His trailer jogging out into the highway into my lane of highway.

Q. And when you observed the trailer jogging out into the highway, I believe you said, what did you do?

A. I applied the brakes at that time.

Q. And what was the next movement that was made by the approaching vehicle?

A. It straightened back up on to his side of the highway.

Q. And did you continue to apply your brakes or did you release your brakes?

A. I kept continuing to apply them. [64]

Q. And what was the next movement that was made by the vehicle that was approaching you?

A. It made another jog out into my side of the highway.

Q. And will you point out to the court at approximately at what spot it made the second jog out into the highway?

A. I would say about at the Lamb driveway.

Q. And what was the next move that was made by the approaching vehicle?

(Testimony of Earnest Byron Brownell.)

A. It straightened back up almost and then went into another jog and it never came out of it.

The Court: Went into another what?

A. Maybe I should say skid, your Honor.

Q. (By Mr. Lush): And was that the third skid that you observed that vehicle making?

A. Yes.

Q. And when he, when the third skid was made by the approaching vehicle in what direction or what path did the vehicles that were approaching you follow?

A. Southeasterly direction.

Q. And did they cross the center lane of the road?      A. Yes.

Q. And did they ever go on to their own side of the road or on to the west side of the road?

A. No.

Q. Where were you with your bus when you first, when the approaching vehicle, the Manning truck went into the third [65] skid that you mentioned?      A. The third skid?

Q. Yes, the last one?

A. I was about 10 feet south of the bridge.

Q. And what did you do with your vehicle at that time, if anything?

A. Well there was only one thing I could do, go across the bridge. I couldn't drive into the barrow pit because I would end up in that drainage ditch so I went on across the bridge and tried to get out on the highway on the right side on my side of the road.

(Testimony of Earnest Byron Brownell.)

Q. And as you, when you approached the north side of the bridge did you do anything particularly then?

A. Nothing except try to get as close to that rail as I could without——

Q. And after you passed the north rail of the bridge did you do anything with your vehicle then?

A. Just before the impact I gave it as much a swerve to the right as I could.

Q. And you did not succeed in avoiding the other vehicle I take it?      A. No. That is right.

Q. How far north of the north edge of the bridge did the impact occur?

A. I would estimate about 10 feet.

Q. And at the moment of impact in what direction was your vehicle heading?

A. In a northeasterly direction. [66]

Q. What part of the bus came in contact with the Manning vehicle?

A. The left front corner.

Q. And what part of the Manning vehicle came in contact with the left front corner of the bus?

A. It was about the center of the truck. It was behind the cab and in front of the rear wheels.

Q. What was the condition of the bus you were driving?

A. It was in excellent condition.

Q. Do you have any idea how old the bus was?

A. About two months.

Q. Do you have any idea of what mileage there was on the bus at the time?

(Testimony of Earnest Byron Brownell.)

A. I am afraid I couldn't say on that.

Q. And was there any time from the time that you first saw the Hawkins vehicle skid, the Manning vehicle skid until the time of the impact was there any time in there when you released your brakes?

A. Well not—I didn't exactly release them. I did vary the pressure to try to keep those wheels just turning.

Q. And what part of the road did you drive the bus on from the Sam Piel driveway to the point of the impact?

A. On the extreme eastern edge.

Q. Did your vehicle skid at all?

A. No, sir.

Q. And why did you drive your vehicle on the extreme [67] right edge of the road?

A. Well I wanted to give the other truck a chance to get by me, and also along the edge of the road there is generally some deep snow that hasn't been packed down and it helps you to slow up.

Q. Now what speed did you drive your bus from Worland to the scene of the accident?

A. About 35 miles an hour.

Q. And what was your speed, your best estimate of your speed at the time that you first paid particular attention to the oncoming vehicle; in other words, when you were at or near Sam Piel's driveway? A. About 35.

Q. And what was the, what is your estimate of



(Testimony of Earnest Byron Brownell.)

the speed of your vehicle at the moment of impact?      A. About 15.

Q. Now after the impact, Mr. Brownell, did you get out of the bus?      A. Yes.

Q. From the time that the Manning vehicle started into its third skid, which was as I understand your testimony the last skid that it took, until the time of the impact will you describe what the position of the tractor was and the trailer of the Manning vehicle on the road?

A. The trailer came across the road first and when the trailer struck the east side of the road or the shoulder then the tractor came across. I would say the wheels of the trailer struck the shoulder of the east side of the road about 75 feet [68] north of the bridge.

Q. And what was the position of the tractor part of the outfit on the road as it came down the road toward you?      A. It was crosswise.

Q. And what portion of the road was it occupying with reference to whether it was on the east side of the road, west side of the road or middle or where it was?

A. Well when it started it was on the west side of the road and when it finished up it was completely across the east side.

Q. What was the condition of the right-of-way off the highway between Sam Piel's driveway and the drainage ditch, can you tell us?

A. As near as I can remember it was full of snow.



(Testimony of Earnest Byron Brownell.)

Q. And was there a ditch or barrow pit, something of the sort along there?

A. Yes, barrow pit.

Q. And was there one on each side of the road?

A. Yes.

Q. The east side and the west side as well?

A. Yes.

Q. And what does the bridge you mention span, what does it go across? A. Drainage canal.

Q. Do you have any idea of the width of that drainage canal? A. It is 20 feet I think.

Q. Is the canal as wide as the bridge, as wide as the bridge is long, is that the idea? A. Yes.

Q. And can you give us any idea how deep that is. That [69] is from the height of the bridge let us say to the surface of the water? I don't suppose you could tell any more than that.

A. I have an idea it is about 10 feet.

Q. Does the map show how wide that bridge is?

A. Width 24 feet.

Q. Is there room enough for a large truck and a bus to meet; such vehicles as were involved in this accident is there room for them to meet on a bridge of that size and width?

A. Yes, there was plenty of room.

Q. And would they be able to pass each other successfully? A. Yes.

Q. And have you had experience of meeting large vehicles on bridges of that width?

A. Yes.

Q. While you were driving a bus? A. Yes.

(Testimony of Earnest Byron Brownell.)

Q. Now the bridge I believe you said is 20 feet long and 24 feet wide, is that what the plat shows?

A. Yes.

Q. And does the plat show the width of the road both north and south approaching that bridge?

A. Yes, 22 feet oiled gravel width.

Q. So that the oilmat on the approaches was 22 feet wide, is that right?

A. That is correct.

Q. And the bridge therefore was 2 feet wider than the oilmat of the road north of the scene of the accident?

A. Yes. [70]

Q. And you have no trouble meeting vehicles of any legal size on the oilmat of these highways, do you?

A. That is right.

Q. And what kind of rails were on that bridge, if you know?

A. Wooden rails.

Q. Was there any opportunity from the time that you first noticed this other vehicle at the irrigation lateral until the moment of impact for you to get off the road or away from the oncoming vehicle?

A. No.

Q. After the first swerve that was made by the truck would you have had an opportunity to get off the road or to go some place to avoid the oncoming truck?

A. After the first swerve?

Q. Yes.

A. It is possible if I had realized that he was going to get out of control that I could have pulled off right at the Piel driveway, however, I would

(Testimony of Earnest Byron Brownell.)

have been taking a chance of still going into that drainage ditch.

Q. When he made the first swerve did you believe that he was then out of control?

A. Yes, after the trailer dropped back into line I thought he was just hitting his brakes to slow down a little bit. I have seen many trucks do that.

Q. And when he made the second swerve did you believe he was out of control at that time? [71]

A. No, because it still started to straighten up.

Q. And where was the truck when you first realized that he was completely out of control?

A. About 200 feet north of the bridge.

Q. And where were you at that moment?

A. 10 to 15 feet south of the bridge.

Q. Now, Mr. Brownell, you were injured in this accident? A. Yes.

Q. And you were taken to the hospital from the scene of the accident, were you? A. Yes.

Q. And you had no opportunity to observe the position of the vehicles after the accident particularly? A. No.

Q. And you had no opportunity to observe wheel tracks or anything of the sort after the accident?

A. No.

Q. How much were you earning at the time of the accident, Mr. Brownell?

A. \$10.55 per day.

Q. And did you work every day?

A. Yes. That is, maybe I should make that clear. We would make a round trip one day and be off

(Testimony of Earnest Byron Brownell.)

the next, however, that was the same as two day's work. Since the one way portion of the trip was one day's work.

Q. And do I understand then that you would actually make \$21.10 one day and you would not work or get any mileage or be paid for the next day, is that correct? A. That is right. [72]

Q. You drove every other day, or you did two days' driving every other day?

A. That is right.

Q. And what injuries did you suffer in this collision, Mr. Brownell?

A. Two broken legs, and burns, very bad burns, and concussion of the head.

Q. Were you cut at all?

A. Yes, I was cut across the left knee clear to the bone.

Q. Now going back for a moment to your earnings. Were you working regularly prior to the accident, say for a month prior to the accident?

A. I believe, yes, I was outside of a trip or two I took off. Is that what you meant?

Q. Yes. You were working a regular run, is that right?

A. No, not up until the 15th of December.

Q. The 15th of December you took over a regular run, is that right? A. Yes.

Q. And from the 15th of December to the time of the accident you worked that run regularly and steadily. A. Yes.

(Testimony of Earnest Byron Brownell.)

Q. And how do you obtain these runs; are they on a seniority basis? A. Yes.

Q. Now to go back to your injuries. You were taken to a hospital, did you say? A. Yes.

Q. And what hospital were you taken to?

A. Worland hospital. [73]

Q. Is that at Worland, Wyoming?

A. Yes.

Q. And who was your attending physician?

A. Doctor Groshart.

Q. And did he treat you in the hospital?

A. Yes.

Q. And did he treat you for your two broken legs? A. Yes.

Q. Did he treat you for your burns?

A. Yes.

Q. And did he treat you for all the injuries that you had suffered? A. Yes.

Q. Now how long were you in the Worland hospital? How long were you a patient there?

A. I was in the hospital the first stretch thirteen months.

The Court: How many months?

A. Thirteen months.

Q. (By Mr. Lush): That was in the Worland hospital? A. Yes.

Q. And what kind of treatment, what treatment was given to you for these broken legs?

A. Yes, they put me on a fracture bed and put my legs up on racks and with weights on them to get traction. And then six weeks after the acci-



(Testimony of Earnest Byron Brownell.)

dent the right leg was casted but the left leg was on this rack for six months.

Q. When they put a cast on the right leg did they then release it from the weights and pressure? A. Yes.

Q. And when they put the left leg on the rack was it [74] then released from the weights?

A. No, the weights were still on.

Q. And how were those weights attached?

A. They put a pin through the heel in order to hold it, through the whole bone put a pin through it, and then there was some sort of a connection to fasten the rope that the weight was attached to so that it would keep straight out.

Q. And how long was your left leg kept that way?

A. Until the 30th of June, 1947.

Q. And what was done to your left leg at that time?

A. They grafted skin on to my left knee; the skin had been either burned or torn off of the area around the knee.

Q. And did they take that skin off other parts of your body?

A. Yes, part of it was off my stomach and part of it off my left thigh.

Q. And after June 30th, 1947, what was done about your left leg?

A. Well it was in a half cast then until I believe March of 1948 at which time they put it in a full cast.



(Testimony of Earnest Byron Brownell.)

Q. And has it been in a full cast ever since that time? A. Yes.

Q. And when you refer to a half cast do you mean a cast that only covers around the front or back of your leg? Is that what you mean by half cast? [75]

A. Yes. At the time of the skin graft they put this cast on my leg all the way around just like a regular cast but since there were open wounds and this place below the knee was draining they had to cut the top of the cast off so they could dress it and then it was bound with bandages so the back half of the leg was held steady and they would open it up and treat the leg.

Q. You are wearing a cast at the present time, are you not, on that left leg? A. Yes.

Q. And is that a solid cast all the way up and down the leg? A. Yes.

Q. Is there any opening in that cast?

A. Yes, there is a window below the knee.

Q. And is that window at the sight of where the breaks are in that leg?

A. Yes, that is where the bone was pulverized or splintered up so bad.

Q. Now what is the present condition of your right leg, Mr. Brownell?

A. Well, I can get about a 90-degree bend on the knee and my ankle I have no control over the muscles that holds this ankle straight from side to side, and on the toe there is a toe drop which I can't pull the toe up only just a very short distance,

(Testimony of Earnest Byron Brownell.)

about half an inch, and there were four breaks in my right leg. [76]

Q. Where were those breaks in your right leg?

A. There is one just below the knee, and one angles down from that break to one below about half way between the knee and the ankle, and that is on the big bone. The shin bone there is a break in the small bone and also a break in the ankle itself.

Q. Now I believe you said you had trouble keeping your ankle from swinging from side to side, is that right?      A. Yes.

Q. And have you been supplied with any corrective devices to help you with that?

A. Yes, the sole has been built up on the outside of the shoe to keep the ankle from turning under when I step on it.

Q. What is the condition of the muscles of your right leg, Mr. Brownell? Do you know anything about the condition of the muscles of your right leg?

A. You mean position?

Q. No, the condition of the muscles?

A. Oh, the condition. Well they are very much smaller than they were before the accident. I don't have as much strength.

Q. Can you bear your weight on your right leg now?

A. Not without the use of both crutches.

Q. And is there any numbness present in your right leg?

A. Yes, the top of my in-step is numb, and the

(Testimony of Earnest Byron Brownell.)

toes are [77] numb, and there is a place along the side of my calf that it is numb.

Q. Are you able to go up and down stairs at the present time on your crutches without other assistance? A. No.

Q. Are you able to go up and down one step such as a curbing without assistance? A. No.

Q. What is the condition of your leg when you get up in the morning; is it any different than during the course of the day or night?

A. Very stiff and painful every morning.

Q. And is that true every morning?

A. Yes.

Q. Does the leg pain you at other times?

A. Yes, it whenever a storm is coming up or a change in weather its very stiff and painful.

Q. And what part of the leg acts in that manner?

A. The knee is stiff and the ankle is very stiff.

Q. What effect does walking have, that is, walking on crutches have on that leg?

A. Well after walking just a short distance it gets very painful and finally plays out on me; I just have to sit down.

Q. And how far do you walk before the leg becomes painful?

A. I would say not over a quarter of a block.

Q. And how long does the pain persist after you have walked a quarter of a block or does it finish as soon as you sit down?

A. About 15 or 20 minutes. [78]

Q. And where is the pain located that you get

(Testimony of Earnest Byron Brownell.)

when you walk, is that in your knee or in your ankle or in the calf muscles or where?

A. Mostly in my ankle, sometimes in the knee.

Q. But mostly in the ankle, is that right?

A. Yes.

Q. Now switching over to your left leg, Mr. Brownell, what use do you have with it?

A. I have no use whatever.

Q. And does the left leg pain you at all.

A. Yes.

Q. And when and under what circumstances does it pain you?

A. Well it of course is the worst during a weather change, however, it doesn't ache at any certain times.

Q. Does it ache frequently? A. Yes.

Q. But not constantly? A. Not constantly.

Q. What was the condition of that leg with reference to pain prior to the skin graft that was put on it? Do you remember that?

A. Well before that time there was just a constant aching, very great pain.

Q. And when was that skin graft put on?

A. On June 30th, 1947.

Q. Now how many breaks are there in your left leg, do you know, Mr. Brownell?

A. There are seven breaks.

Q. That skin graft was six months after the accident happened, is that right? A. Yes.

Q. And those breaks, they have never knitted,

(Testimony of Earnest Byron Brownell.)

is that [79] correct? The bone has never knitted there as far as you know?      A. No.

Q. Now I see that you still have a cast on that leg. Is it the cast that forces you to keep the leg out straight?      A. Yes.

Q. And do you have any other injuries to that left leg other than the shattering of the bone below the knee?

A. Well just the cut across the knee, the skin torn off of the knee, and then there were other breaks down in the lower part of my leg in the foot.

Q. How many breaks are there in the leg and foot in all, do you know?      A. Seven.

Q. Now were you conscious after the accident?

A. Just for a short period.

Q. And do you know whether any treatment was given to you or any aid was given to you before you reached the hospital?

A. I couldn't tell you about that.

Q. Now what is the condition of your hands, Mr. Brownell? The present condition of your hands. Show the court what it is.

A. Some of the tendons were burned on that first joint.

Q. Now starting with the little finger on the right hand does the top joint bend there or is that immobile?      A. This is the top joint?

Q. No, this is the first joint. Does that bend?

A. It bends very little. [80]

Q. And the middle joint, does this bend?



(Testimony of Earnest Byron Brownell.)

A. Yes.

Q. And how about the knuckle at the juncture of the hand, does that knuckle bend? A. Yes.

Q. And can you touch the little finger of your right hand back to your palm? Not quite I see.

Q. Can you touch your palm right in the pads of your finger? A. No, I can't.

Q. How about the next finger of your right hand? How about the top joint of it, will it bend?

A. A little.

Q. And the middle finger?

A. That is the best finger on the hand.

Q. And the knuckle where the finger joins the hand, does that bend all right? I am talking about the second finger here?

A. That is as far down as I can get it.

Q. Let the record be made to show the finger can't be moved closer than about one inch from the palm of the hand. And the third finger, the middle finger of your right hand, I believe you said was the best finger of all? A. Yes.

Q. Will the top joint bend? And will the middle joint bend? A. Yes.

Q. Will the knuckle bend? A. Yes.

Q. Can you put that finger back against the palm of your hand? A. No.

Q. Now going to the index finger on your right hand will that finger bend in the first or top knuckle? A. No. [81]

Q. And does it bend in the middle knuckle?

A. Yes.



(Testimony of Earnest Byron Brownell.)

Q. And will it bend in the knuckle where the finger joins the palm? A. Yes.

Q. Can you touch that finger to the palm of your hand? A. No.

Q. And the thumb on your right hand, do you have motion in that? A. Yes.

Q. Complete motion?

A. Well, not as good as it used to be.

Q. Now moving to your left hand, Mr. Brownell, will you describe what motion you have in the little finger of your left hand? Will the top joint bend?

A. Just a very little.

Q. Will the middle joint? A. It bends.

Q. And the knuckle at the juncture of the finger and the hand? A. That bends.

Q. And is the pad of your little finger touching the pad of your palm there?

A. No, I can't reach the palm.

Q. And the next finger of your left hand, will the top joint of that finger bend? A. No.

Q. Will the middle joint bend? A. Yes.

Q. And will the joint at the juncture of the finger and the palm bend? A. Yes.

Q. Can you get that finger back against the palm of your hand? A. Not quite. [82]

Q. Now the middle finger of the left hand, will the top joint bend? A. Yes.

Q. And will the middle joint bend?

A. Yes.

Q. And will the joint bend at the juncture of the finger and the palm? A. Yes.

(Testimony of Earnest Byron Brownell.)

Q. Can you touch that pad to the palm of your hand?      A. Yes.

Q. That is the best finger of the left hand, is it?

A. Yes.

Q. And now the index finger of your left hand, will the top joint of that bend?

A. Just a very little.

Q. And will the middle joint bend?

A. Yes.

Q. And will the joint at the juncture of the fingers and the palm bend?      A. Yes.

Q. And can you touch that finger against the palm of your hand?      A. No.

Q. And the thumb on your right hand, Mr. Brownell, will it bend?

A. The first joint bends hardly any.

Q. And the juncture joint at the juncture of the thumb and hand, that bends all right, is that right?

A. Not all right, no. It will bend.

Q. Can you touch that thumb to the palm of your hand?      A. No.

Q. What head injuries did you sustain in this collision, Mr. Brownell? [83]

The Court: We will take a ten minute recess.  
(11:15 a.m.)

(Court resumed at 11:25 a.m., at which time all counsel and plaintiff were present.)

EARNEST BYRON BROWNELL  
resumed the stand and testified as follows:

Direct Examination  
(Continued)

By Mr. Lush:

Q. Mr. Brownell, I believe just before recess I asked you if you had received any head injuries?

A. Yes. I had a skull fracture.

Q. Were you unconscious after the accident?

A. Yes.

Q. And for what period were you unconscious, completely unconscious, if you remember it?

A. Well, outside of—I couldn't tell you exactly; it must have been a very few minutes.

Q. And you regained consciousness when they were taking you back to the hospital do you think?

A. No, I regained consciousness at the steering wheel.

Q. At the steering wheel? A. Yes.

Q. And did you later become unconscious?

A. It was just shortly after these fellows pulled me out of the drainage ditch.

Q. You got from the bus from behind the wheel into the drainage ditch, did you? A. Yes. [84]

Q. Now, when did you regain consciousness after that if you remember?

A. The first time I remember was a month or a little more than a month after the accident.

(Testimony of Earnest Byron Brownell.)

Q. And were you burned in this accident?

A. Yes.

Q. What parts of your body were burned?

A. My hands, face, neck and ears, shoulders and elbows, and spots on my legs.

Q. Now, do you have full motion of both of your wrists, Mr. Brownell?

A. The left is I believe full motion, however, the right is restricted.

Q. And is there scar tissue on that right wrist?

A. Yes.

Q. What was your occupation prior to the time that you became a bus driver, Mr. Brownell?

A. Truck driver.

Q. And for whom did you drive truck?

A. Consolidated Motor Freight.

Q. And for how long did you drive for Consolidated Motor Freight?

A. A year and a half.

Q. And what was your occupation prior to that time?

A. Truck driver.

Q. And for whom did you drive then?

A. Colorado Rapid Transit.

Q. And for how long did you drive for the Colorado Rapid Transit?

A. For seven years. [85]

Q. And what was your occupation before that?

A. Truck driver.

Q. And for whom were you driving then?

A. Different construction companies.

Q. And how long did you drive for these various construction companies?

A. About four years.

(Testimony of Earnest Byron Brownell.)

Q. And what was your occupation before that?

A. Well, I guess you would say a ranch hand.

Q. Ranch hand? A. Yes.

Q. How many years total truck driver experience did you have excluding the bus driving?

A. Just the truck driving?

Q. Just truck driving?

A. Fourteen years.

Q. And during those fourteen years what type of trucks did you drive with reference to whether they were single units or multiple units or whatever they were?

A. Well, just about all types, straight jobs, semis, and what some of them refer to as double beds where you have a trailer and four trailers hooked on behind.

Q. That last unit you described would that be a tractor plus a semi plus another trailer, is that the idea? A. That is right, yes.

Q. How much experience did you have driving a semi? A. About two years.

Q. And for whom did you drive that? [86]

A. A year and a half of it for Consolidated and part of the time for construction outfits.

Q. And during the course of your experience did you have occasion to drive semis on icy roads?

A. Yes.

Q. And you are familiar with the method of handling semis on icy roads? A. Yes.

Q. Now, based upon your knowledge of the conditions that existed on the day of this accident and



(Testimony of Earnest Byron Brownell.)

the place of this accident have you an opinion as to whether or not the driving of the Manning outfit by Hawkins was well or poorly done?

Mr. Goppert: Objected to as invading the province of the court and being a mere conclusion of the witness.

The Court: Well, of course, he is qualified as an expert driver. He drove equipment of that sort about two years. Yes, there is rather a close question there whether he can do more than testify as to the condition of the roadway and how the approaching vehicle was being driven as he saw it and what would be, what speed he was driving, what would apparently be a safe speed over that sort of road. I think that is about as close as he can come to it without giving an opinion there.

Mr. Lush: All right, your Honor.

Q. Mr. Brownell, did you observe the speed of the vehicle that was approaching you?

A. Yes.

Q. Have you had an opportunity from your own driving and from your observation to judge the speed of other vehicles? [87]

A. Yes.

Q. And have you from your own experience had an opportunity to judge what is a safe speed under varying conditions?

A. Yes.

Q. Have you had an opportunity to form judgments as to what is a safe and proper manner for handling a semi under icy conditions?

A. Yes.

Q. Did you observe the movements of the semi that was approaching you from the north?

(Testimony of Earnest Byron Brownell.)

A. The movements?

Q. Yes.           A. Yes.

Q. What is your opinion as to the speed at which that vehicle was approaching you?

A. I would say that he was traveling about 50 miles an hour.

Q. And was that when you first observed him?

A. Yes.

Q. And you observed the manner in which the vehicle moved about on the road?           A. Yes.

Q. From your observation of the vehicle and your experience as a driver and from your knowledge of conditions on that day do you have an opinion as to whether or not that vehicle was being driven in a careful manner?

Mr. Goppert: That is objected to as calling for a conclusion of the witness.

The Court: Yes. Ask him from his own experience and from his observation what in his judgment would be a safe speed [88] over a roadway in the condition of the road at that time. See what his own opinion as an expert driver would be as to a safe rate of speed.

Q. (By Mr. Lush): Do you have an opinion from your own observation and experience what would be a safe speed for driving a semi over that road from the north, Mr. Brownell.

A. Well, there's a lot of factors to consider and as to how the semi itself felt on ice and as to whether brakes, one brake on one side of the truck would catch before the other one, that is, lock the

(Testimony of Earnest Byron Brownell.)

wheel, but if it was all in good condition, I would say around 35 miles would be a safe speed.

Q. What is the date of your birth, Mr. Brownell?      A. July 16th, 1911.

Mr. Lush: You may cross-examine.

### Cross-Examination

By Mr. Goppert:

Q. Mr. Brownell, it was on December the 27th, 1946, in the afternoon when this accident happened, was it not?      A. Yes.

Q. And at that time you were driving this Burlington bus with approximately 22 passengers in the vehicle northward, were you not?

A. Not with 22 passengers in it. [89]

Q. How many?      A. Eighteen.

Q. That was an American Car Foundry Brill type bus, was it not?      A. Yes.

Q. 37 seats?      A. Yes.

Q. That is, for passengers?      A. Yes.

Q. And approximately 35 feet long and 8 feet wide?      A. I believe it is—Yes.

Q. And weighing approximately 22,000 pounds unladen weight?

A. I believe it is 19,500 unladen.

Q. How much?      A. 19,500 unladen.

Q. Unladen weight?      A. Yes.

Q. And you had the passengers' baggage with you?      A. Yes.

Q. Do you recall where you first came on the icy road condition coming from the south that day?

(Testimony of Earnest Byron Brownell.)

A. Well, it was spotty from Thermopolis to Worland and then from Worland on to the scene of the accident then it was all ice.

Q. It was all ice from Worland to the scene of the accident as you recall it?

A. Yes. Maybe I should say it was ice with snow on top of it.

Q. As a matter of fact there was an ice condition south of that with snow over it, was there not?

A. Yes.

Q. Didn't that extend down to the middle of the Big Horn Canyon approximately 8 to 10 miles south of Thermopolis? [90]

A. I don't remember any ice in the canyon. There may have been a few spots in the shaded places.

Q. Of course, you were driving the Burlington bus; it was a regular scheduled bus, was it not?

A. Yes.

Q. You left Casper that morning on time I take it?

A. Yes.

Q. And you were on time into Thermopolis, were you not?

A. Yes. I believe I was five minutes late.

Q. Into Thermopolis?

A. Yes.

Q. And do you recall what your schedule fixed as to the time for leaving Worland?

A. 1:55.

Q. And do you recall about what time you left Worland?

A. I was about 10 minutes late.

Q. And isn't it a fact that your schedule re-

(Testimony of Earnest Byron Brownell.)

quired elapsed time of 44 miles per hour including stops?

A. The average if you were to average the schedule up you mean?

Q. That is right. Elapsed time from Casper to Billings?

A. I couldn't say as to that. I have never figured it up.

Q. You knew the distance from Casper to Billings? A. Yes.

Q. How many miles?

A. It is 166 to Casper, Greybull, and 125—Well I don't know just exactly what it is. 125 Greybull to Billings, I believe. I made a mistake there; it is 203 to Greybull and 125 to Billings. [91]

Q. You mean it is approximately 328 miles from Casper to Billings? A. Yes, that is right.

Q. And then you left Casper at that time on schedule that took you out of Casper at what hour?

A. 9:00.

Q. 9:00 a.m. A. Yes.

Q. And would get you into Billings at what time?

A. It was 5:40, I believe.

Q. And you had rest stops, did you not, at Shoshone, Thermopolis, and Greybull and Frannie?

A. I couldn't say as to Frannie. A rest stop at Shoshone, Thermopolis and Shoshone.

Q. Beaver was the rest stop, wasn't it, instead of Frannie?

A. I believe they do have a rest stop at Beaver.



(Testimony of Earnest Byron Brownell.)

Q. You were using that at the time you made the run too, were you not? A. No, sir.

Q. Those were 10 minute rest stops?

A. Yes Well, there was a meal stop at Thermopolis.

Q. That was how long? A. 35 minutes.

Q. On this day do you recall the time you left Worland?

A. As I say I think I was about 10 minutes late and the schedule was due out at 1:55.

Q. You were due out of there 1:55 and you believe you were 10 minutes late? A. Yes.

Q. And your best recollection as to your speed, Mr. [92] Brownell, from the time you left Worland to the scene of the accident?

A. About 35 miles an hour.

Q. You recall testifying in this case previously, do you not? And do you recall at that time you testified that it was 35 to 40 miles per hour?

A. Yes. However, that is just an estimate. It is still just an estimate. I don't know, what I mean to say is I wasn't looking at the speedometer.

Q. You did recognize the fact that the road was very icy and very slick from Worland clear up to the scene of the accident? A. Yes.

Q. And describing that would you describe that as being icy on the pavement, that is, the macadam or blacktop pavement, and then on top of that ice a snow had fallen and then packed by traffic, is that the way you would describe it?

A. Out in the center it was packed, yes.

(Testimony of Earnest Byron Brownell.)

Q. Out——

A. Out in the center it was packed, yes.

Q. It covered, that is, where the cars traveled it was packed? A. Yes, that is right.

Q. And that would be a strip say 16 feet wide or so on the road, wouldn't it? A. Yes.

Q. And could you see the shoulders of the road very clearly? A. Well, you could define them.

Q. How? [93]

A. You could define them. You could tell by the snow where the shoulder was.

Q. A little slip of some kind of vegetation come up out on the edge past the blacktop, didn't it?

A. Yes.

Q. And that would show up along and you could see that little streak along each side of the road?

A. I don't remember any vegetation but you could see the hump where the shoulder of the road was.

Q. In other words, the snow going over the rounded shoulder of the road? A. Yes.

Q. And of course driving out to the scene of the accident you had no trouble seeing just what part of the road you should travel on because the center portion, 16 foot strip in the middle of the road was packed down, was it not? A. Yes.

Q. And of course coming to the scene of the accident you could see vehicles in front of you for a considerable distance, could you not? A. Yes.

Q. Was it storming or snowing at the time?

A. Just spitting snow.

(Testimony of Earnest Byron Brownell.)

Q. Just a few occasional flakes or were they pretty thick?

A. Well, I would say occasional; there wasn't very much coming down.

Q. Not a lot? A. That is right.

Q. It was an overcast sky, was it not?

A. Yes.

Q. Sort of made it a little bit darkened from just a [94] cloudy day? A. Yes.

Q. And from the bridge how far south of that bridge could you see it coming from the south the bridge and the scene of the accident?

A. Oh, I imagine you could see it half a mile.

Q. And you could see on past the bridge too any vehicles coming from the north, couldn't you?

A. I believe you can.

Q. And as a matter of fact weren't you approximately 450 feet or 150 yards from the bridge when you first observed a truck coming from the north which later was the one you become involved in the collision with? A. No.

Q. Do you recall having been interviewed on this matter by the State Highway Patrol and the Sheriff of Washaski County, Wyoming, after the accident? A. No.

Q. You don't have any recollection of the statement you gave the Highway Patrol and the Sheriff?

A. No.

Q. I am talking about when you were in the hospital?

A. I don't remember a thing about it.

(Testimony of Earnest Byron Brownell.)

Q. You don't remember telling them that you first observed the truck approximately 150 yards, when you were approximately 150 yards from it?

A. No, sir.

Mr. Lush: You were talking about the bridge and then you crossed over to 150 yards from the truck.

Q. From the truck? [95]

A. I don't remember talking to them about anything.

Q. You don't remember telling the Sheriff or the Highway Patrolmen anything about the accident?

A. No.

Q. You do recall giving a deposition that was taken in the Hennessey cases by Mr. Doepker and Mr. Frank O'Mahoney, do you not?

A. Yes.

Q. Would you state your, from your experience how far, what distance rather you would have had to travel with your bus going at the speed of 35 to 40 miles an hour taking into consideration the roads as you saw them that day before you could bring it to a stop?

A. About 250 feet.

Q. Wouldn't that be nearer 300 feet?

A. That is just an estimate.

Q. How?

A. That is just an estimate.

Q. Well, of course it would be an estimate but wouldn't that be using the best braking and ideal braking situation, or fanning them as truckers call it, and bringing it to a stop on that icy road?

A. You mean it would be closer to 300 feet?

Q. Yes.

(Testimony of Earnest Byron Brownell.)

A. I wouldn't say so. I estimated it 250 feet.

Q. How far did you travel to bring it down from a speed of 35 to 40 miles an hour to a speed of 15 miles an hour, that is, your bus traveling on that icy road?

A. Well, I suppose about 180 [96] feet.

Q. The way you brake it down you would have to roll about 180 feet to get your speed down from 35 miles you were going down to 15 miles an hour?

A. Yes.

Q. That would be your best judgment and how much faster would you have had to gone to completely stop it? A. About 50 feet.

Q. And isn't it a fact that the snow and conditions interfered to some extent with your vision?

A. Well very little; you could see half a mile clearly.

Q. You could see half a mile in front of you clearly? A. Yes.

Q. Did you ever make a full application of the brakes on your bus as you came into the collision?

A. You mean jammed them on?

Q. That is right? A. I don't believe so.

Q. Isn't it a fact that when you were asked a similar question at Worland you stated that you didn't believe you made a full application of the brakes unless it was in the last 5 or 10 feet before the impact? A. That is right.

Q. You made that statement there, did you not, on direct by Mr. Doepker? A. Yes.

Q. Do you recall being asked a question by Mr.



(Testimony of Earnest Byron Brownell.)

Doepker in the taking of the deposition in Worland in December of 1947: And you were driving at approximately 35 to 40 miles an hour northward on U. S. No. 20 from Worland toward Basin, Wyoming? [97] And your answer: That is right. Do you recall that?

A. Would you read that over again, please?

Q. And you were driving—this is the question—And you were driving at approximately 35 to 40 miles an hour northward on U. S. No. 20 from Worland toward Basin, Wyoming? And your answer: That is right? A. Yes.

Q. And when you approached a place approximately 200 feet south of that bridge near where the accident occurred you observed a vehicle headed toward you from the opposite direction? Do you remember being asked that question? And your answer was: That is right.

Q. Did you so testify at that time?

A. Yes.

Q. And the next question: It appeared to be a truck? And your answer was: Yes.

Q. You remember that? A. Yes.

Q. And the next question. At that time you were about 400 feet apart? And your answer: Possibly 450 feet.

Q. Did you so testify at that time?

A. Yes.

Q. And then the next question was: 400 to 450 feet would be your best judgment, is that right? And your answer: I should think so.

(Testimony of Earnest Byron Brownell.)

Q. Did you so testify? A. Yes.

Q. Was it at that time that you observed the trailer portion of his truck swing out toward the center portion of the highway? Answer: Yes, sir.

A. I didn't hear it. [98]

Q. The question is: Was it at that time that you observed the trailer portion of his truck swing out toward the center portion of the highway? Answer: Yes, sir. A. Yes.

Q. You knew you were on very icy road, did you not? Answer: Yes, sir.

Q. And then the next question—Did you so answer at that time? A. Yes.

Q. But you immediately applied your brakes lightly? Answer: Yes.

Q. Did you so testify at that time?

A. Yes.

Q. And then you were also asked this question at that time: Now the place you locate or one that you first saw this tractor was that you were just south of that driveway into the ranch house just south of the bridge, is that right? And your answer is: Yes.

Q. Was that right?

A. Could I have that again?

Q. Now, the place you locate or one that you first saw this tractor was you were just south of that driveway into the ranch house just south of the bridge, is that right? And your answer: Yes.

A. I don't remember any question about the ground.

(Testimony of Earnest Byron Brownell.)

Q. Well, to help refresh your memory, about how far south of that driveway or entrance road were you? And your answer: I suppose 10 to 15 feet.

A. Yes.

Q. You remember making that statement?

A. Yes.

Q. And locating your bus approximately 10 to 15 feet south [99] of this Piel driveway?

A. That is right.

Q. And it was from that place you said it was a distance of approximately 400 to 450 feet to the Manning tuck, that is right, isn't it?

A. Didn't I say 450 to 500?

Q. Beg your pardon. The record as I read it to you and you testified you said possibly 450 feet; Mr. Doepker said 400 to 450 feet.

A. Yes, sir.

The Court: I think we had better suspend here. We will take a recess until two o'clock p.m. (12:00 noon).

(Court resumed at 2:00 o'clock p.m., at which time all counsel were present, and plaintiff was present.)

The Court: Proceed. [100]

## EARNEST BYRON BROWNELL

resumed the stand and testified as follows:

(Continued)

## Cross-Examination

By Mr. Goppert:

Q. Mr. Brownell, I believe at the time of the recess we were considering the speed at which the bus was scheduled on the regular time table schedule and I want to ask you if that speed wasn't 44 miles per hour, leaving out the—that is, leaving out the time for rest periods and lunch?

A. I don't know what the average is on that.

Q. You recall testifying by deposition in December of 1947? At that time didn't you answer that question: About 44 miles per hour?

A. Yes, although that particular run I believe I was mistaken about it at the time. The only run I tried to figure out the average was on the main line between Cheyenne and Rock Springs.

Q. You think you were confusing the time on this run with [101] the run on the main line between Rock Springs and Cheyenne?

A. No, that was I wasn't confusing the same but the way the question was put was as to the average of these schedules and I don't know what that schedule on that particular run was.

Q. You hadn't figured it out? A. No.

Q. You had only been on the run since the 15th of December, 12 days? A. Yes.

Q. And made six trips? A. Yes.

(Testimony of Earnest Byron Brownell.)

Q. What was this, the sixth one?

A. What did you say?

Q. Was this trip that resulted in this accident the sixth trip you had made on that run from Casper to Billings?

A. Well, I couldn't say right now whether it was or not without thinking about it.

Q. In estimating the speed of these vehicles I believe your evidence now is that your vehicle was going at 35 miles per hour and the other one was coming toward you at 50 miles per hour?

A. Yes.

Q. That is before either of you slackened your speed at all?           A. Yes.

Q. Isn't it a fact that shortly after this accident you made the statement that you thought the truck would pass you on the bridge and that you slowed your vehicle down in order to prevent that?

A. I don't remember.

Q. Isn't it a fact that you told the Highway Patrolman [102] and the Sheriff "that I started to slow down as I didn't want to meet him"—meaning the truck—"on the bridge."

A. I couldn't say whether I said that or not.

Mr. Lush: Your Honor, Mr. Brownell already testified he doesn't remember ever seeing the Highway Patrolman or Sheriff after the accident.

The Court: Yes, I think you referred to that once before.

Mr. Goppert: That is right.

Q. (By Mr. Goppert): Now then you testified



(Testimony of Earnest Byron Brownell.)

that your speed when the collision, the actual impact of the collision took place was approximately 15 miles per hour?      A. Yes.

Q. What was the speed of the vehicle that was then coming toward you or was headed southeast on that roadway, I believe you said?

A. About the same speed I would say.

Q. As yours?      A. Yes.

Q. And it was coming sideways?      A. Yes.

Q. Now, as I understand it that vehicle was headed with the front of it southeasterly and the rear of it was toward the northwest diagonally across the highway, was it not, just before the collision?      A. The tractor?

Q. Yes.

A. You say the radiator or the front of the tractor was headed southeast? [103]

Q. That is right?

A. And the rear end of the tractor was headed northwest?

Q. That is correct, is it not?      A. No.

Q. How was the direction?

A. Well, if the front end was headed northeast the rear end would have to be headed towards the——

Mr. Goppert: Pardon me. I don't know whether I am confused or you.

A. Did you say the southwest?

Q. Yes, southwest for the front end?

A. And northwest?

Q. And northeast for the rear end?

(Testimony of Earnest Byron Brownell.)

A. Well, that is correct.

Q. That is correct, is it? A. Yes.

Q. I think maybe we got confused there. And it was headed toward the south, I mean the vehicle itself was moving southeast, was it not, immediately before the collision? A. Yes.

Q. I am talking about the tractor part of the truck that part was going southeast even though the vehicle itself was headed the way that you have just described? A. Yes, that is right.

Q. In other words, it was sliding southeast?

A. Yes.

Q. Across that roadway that you were going to travel over? A. Yes. [104]

Q. And how long a skid in that direction did that truck make before you contacted it or it contacted your vehicle, would you say 150 to 200 feet?

A. No.

Q. How far?

A. I suppose 20 to 25 feet, somewhere along there.

Q. Did it just gradually slip into that position as it came across the roadway? A. Yes.

Q. You talked about it, this being the third skid you had seen on that vehicle and as I understand it you place the beginning of this third skid at a point approximately west of the Lamb entryway, the one you marked "C," did you not? A. Yes.

Q. And it ended up, did I understand you to say it ended up 10 feet north of this bridge that is

(Testimony of Earnest Byron Brownell.)

marked timber bridge on this Plaintiff's Exhibit 1?

A. Yes.

Q. And during that distance did it first start out with the front end of the tractor headed southeasterly or did it start with just swinging the back end out and gradually come around there in an arc?

A. When it first started skidding as I remember the trailer was all that was doing the skidding over into my side of the road.

Q. The trailer swung out first, did it?

A. Yes.

Q. And it created a great big arc with the trailer swinging to the east side first and pulling the tractor around, is [105] that right?

A. Well, it didn't pull any of the tractor around until after the wheels on the trailer struck the right side of the road on the east side of the road.

Q. It was the rear wheels of the trailer that hit the east side of the road and the tractor was still headed southeasterly before that hit, that is, the rear end of the trailer hit the east side of the road?

A. Yes, that is, the tractor was still over on his side of the road.

Q. The tractor was still on the right hand side of the road?           A. Yes.

Q. Then it hadn't started across the road from this first slide across the road from the Lamb driveway down to the bridge that hadn't started yet at that time?

A. Not when the trailer wheels were on the edge

(Testimony of Earnest Byron Brownell.)

of the road; it was when they hit the edge of the road.

Q. I want to get that straight. The tractor itself as I understand it was still on the right hand side of the road when the trailer swung over and got over in the east barrow pit? A. Yes.

Q. And was that tractor on the west side of the road at the time that the trailer actually hit the east barrow pit, the rear end of it? A. Yes.

Q. And where did that trailer hit the east barrow pit? [106]

A. About 75 feet north of the bridge.

Q. Bridge down here? A. Yes.

Q. And the tractor was still on the right hand side of the road clear to that place? A. Yes.

Q. And then what happened, did it pull the tractor on over across the road in front of you?

A. Yes.

Q. Just before the accident, just before they struck, you observed someone in this truck, didn't you, driving it?

A. Yes, just before the point of impact.

Q. Did you have occasion to see him and observe how old he was?

A. I got just a split second glance of him.

Q. You come to a conclusion on his age, didn't you, and so testified?

A. I could make a guess at it.

Q. You say you could make a guess and was that what you were doing when you testified at Worland in December of 1947?

(Testimony of Earnest Byron Brownell.)

A. Well, I wouldn't try to say definitely that he was only a certain age when I only seen him a split second.

Q. You do recall testifying definitely at that time, do you not, that he was approximately 21 years of age?

A. I don't remember saying definitely.

Mr. Lush: I object, your Honor, unless the question is read to the witness, to forcing the answer upon him. [107]

The Court: Yes, and you ought to let him look at it too and see it in print. Just show it to him.

Q. (By Mr. Goppert): Directing your attention to this question and answer that appears. Do you see all right at that distance? Isn't it here you are to see?: Q. You say he was about 21 years of age? Answer: I would say around there.

Q. Did you so testify at that time?

A. Yes.

Q. Then you were asked the next question: What would you say if I told you he had a child about 15 years of age? Your answer: I would say he was a pretty fast worker. A. That is right.

Q. Just before the collision as I understand it you endeavored to turn your bus to the right, is that right? A. Yes.

Q. Did you try to make that turn while a part of the bus was still on the roadway—I mean on the bridge? A. Yes.

Q. Isn't it a fact that you also swerved your bus to its left before coming up on the bridge?



(Testimony of Earnest Byron Brownell.)

A. No.

Q. You could see before you collided the portion of the truck you were going to hit, did you not?

A. Yes.

Q. And what portion was that?

A. Well, if I had held straight ahead I would have hit the side door of the cab.

Q. And where did you hit?

A. Just behind the cab. [108]

Q. You do know that, do you not? A. Yes.

Q. That is, you aren't telling now what somebody told you but what you saw when you hit?

A. That is what I saw.

Q. Now, when you saw that trailer go out in front of the—I mean cross over in front of your lane of travel and hit clear over on the east side of the roadway it was 75 feet north of the bridge?

A. I would estimate it 75 feet north of the bridge at the time it hit.

Q. And where were you at that time?

A. I was just going on to the bridge.

Q. And then the outfit came toward you a distance of 65 feet from that time while you went over the bridge in a distance of 10 feet? A. Yes.

Q. Traveling at the same speed you were?

A. I didn't say he was traveling at the same speed.

Q. Well, when you hit were you traveling at the same speed? A. Yes.

Q. You did observe then, did you not, that that bus or that truck and its trailer had skidded and

(Testimony of Earnest Byron Brownell.)

was entirely out of control when it was 75 feet north of the bridge?      A. Yes.

Q. As a matter of fact you observed it was out of control when it was in front of that Lamb driveway, didn't you? [109]      A. Not——

Q. It hadn't gotten clear across the road yet?

A. No.

Q. You do know from experience in driving trucks and buses when they are going to skid on ice that you can't stop them, don't you?      A. Yes.

Q. And they go anywhere, isn't that a fact?

A. Well, they don't just go anywhere; that depends on where you put them.

Q. Coming down to your employment you have related did I understand 12 or 14 years of truck driving?      A. About 14 years I believe.

Q. And how many as bus driver?

A. Three years and three months.

Q. And until you got this steady run on the 15th of December, 1946, did you have a steady run for the Burlington Trailways?

A. At times, yes.

Q. You were out-seniorred on seniority?

A. At times, yes.

Q. Could you give the court the amount of your net earnings for the year 1946?

A. I believe it is around \$3500. You say net earnings?

Q. Yes, net?

A. That would be with withholding tax out.

Q. And deductions out?

(Testimony of Earnest Byron Brownell.)

A. I believe that was the gross. [110]

Q. And there would be about \$500.00 deducted for social security, withholding and the other things that are taken out?

A. Yes.

Q. Did you have taken out of that something for a disability fund or anything of that kind?

A. Disability fund?

Q. Yes.

A. I don't remember anything about a disability fund. We did have an insurance; that is, a group insurance.

Q. Well, that is what I mean, to cover disabilities from employment?

Mr. Lush: Your Honor, I object to any testimony being taken from this witness on any insurance he might have purchased out of his paychecks or otherwise.

The Court: Well, what do you say as to the materiality? Is that competent?

Mr. Goppert: I feel, if the court please, that all funds to which contribution is made by the employer at lease are proper in evidence and I understood they had a fund that was contributed to partly by the employer and partly by the employee to cover accidents or loss of time from accidents.

Mr. Lush: If such a fund existed, your Honor, I know nothing of it. There was an insurance fund to which this man was making contributions and his payments to insurance funds certainly are not deductible from his earnings in mitigation [111] of damages here, nor any amount paid to him from

(Testimony of Earnest Byron Brownell.)

any insurance policy or insurance fund be deductible from his damages or be permitted to be shown in mitigation of damages.

The Court: Did you say you have any authority on that. I am inclined to think they are not deductible, but the law changes sometimes very quickly from day to day.

Mr. Goppert: I will refrain from asking any further questions on that until we have some authority.

The Court: I don't think it is deductible. That is my recollection of it, but if you find something to the contrary since I formed that opinion we will consider it, of course.

Mr. Goppert: I will refrain from asking questions on it until I do find some authorities I do wish to submit.

The Court: All right.

Q. (By Mr. Goppert): You don't have anything like the railroad retirement fund for truck drivers? A. No.

Q. You do have, do you not, the so-called social security? A. Yes.

Q. The same as other employees? A. Yes.

Q. In regard to your wages your net wages then were about \$3,000.00, during 1946?

A. I believe that is right.

Q. That would be the amount of your paychecks? A. Yes. [112]

Q. But that didn't include any deduction for

(Testimony of Earnest Byron Brownell.)

this group insurance that counsel was talking about?

A. Well, this group insurance we were talking about——

Mr. Lush: Your Honor, I object to any inquiries with reference to group insurance.

Mr. Goppert: That is the other way around. Was anything taken out on that. I don't think there was. I think he paid it out of his own pocket.

The Court: Well, let him answer it.

Q. I will put it this way. There was no withholding for any group insurance or anything of that kind? If you had it, you paid it yourself?

A. Yes, we had an insurance policy but it didn't cover me on the job; it covered me and my family off the job.

Q. That is something you paid for yourself; it wasn't anything deducted from your wages, was it?

A. They took it out of my wages.

Q. Could you tell us what your earnings were for the previous five year period, net earnings?

Mr. Lush: I object, your Honor. That is too remote.

The Court: Yes, I think so. Sustain the objection.

Q. Do you know how many days you worked in 1946? A. No, I don't.

Q. How many days did you work per week in 1946 on the average? [113]

A. Well, the way that was worked on the Trailways if you were on a steady run and didn't lay off



(Testimony of Earnest Byron Brownell.)

you could work the equivalent of one way run per day unless the assignment had an assigned relief.

Q. Well, Mr. Brownell, I didn't want to get into the detail of it but you probably know about how many days you spent in 1946 on your work and how many you were off? You were off part of the time there, weren't you, in 1946? A. Yes.

Q. About how much time did you miss from your employment in 1946?

A. Well, I wouldn't have any idea.

Q. Would it be fifty days?

A. I suppose I could estimate thirty days.

Q. Thirty days. Then you worked Sundays and holidays and every day except thirty days approximately in 1946, is that right? A. Yes.

Mr. Goppert: That is all.

### Redirect Examination

By Mr. Lush:

Q. Now, Mr. Brownell, when you said you worked all but thirty days in 1946, when you are actually on the run every other day you consider that full time work, is that true? [114] A. Yes.

Q. So that when you say you missed thirty days your best estimate is that you missed thirty days in 1946, does that mean you missed fifteen runs or does it mean you missed thirty runs during the course of the year?

A. Well, that is hard to define on account of the way they work their board.

Q. Well, now if you worked every other day for

(Testimony of Earnest Byron Brownell.)

the entire year, then you would work and actually be on the job one-half of 365 days, wouldn't you?

A. Yes.

Q. And that would be 182 days roughly, would it not? A. Yes.

Q. So that you would actually make about 182 runs in a year if you were working complete and full time? A. Yes.

Q. And when you said that you probably missed thirty days during 1946 does that, do you mean that you lost 15 of these 182 runs or 30 of these 182 runs?

A. Actually that would be 15.

Q. You figure you lost about 15 runs from steady work? A. Yes.

Q. And steady work is actually driving every other day, is that right? A. Yes.

Q. Now, when you were testifying here with reference to where you saw the truck go and where you saw the trailer go, that is, the tractor and the trailer and so on and so forth, [115] were those estimates of the distances that you were giving there? A. Yes.

Q. And when you testified as to the position in which you first saw the truck or first paid particular attention to the truck as 425 feet north of the bridge or north of the center line of the bridge approximately was that an estimate? A. Yes.

Q. And was that estimate based on the map here? A. Yes.

Q. And when you stated that you saw the vehicle coming from the opposite direction approximately

(Testimony of Earnest Byron Brownell.)

when you were about at Sam Piel's driveway that is your nearest recollection of where your vehicle was when you first saw the truck at the rise in the road, is that right?      A. Yes, that is right.

Q. Now, Mr. Goppert asked you whether it was not true that when a truck or bus started to skid on a road it would just go anywhere, did he not?

A. Yes.

Q. And you replied that it wouldn't just go anywhere, it would go where you put it or it depends on where you put it, is that right?      A. Yes.

Q. How do you control the movements of a truck or bus on slippery road once it starts to skid?

A. Well, the only way you can control it is to keep those wheels turning.

Q. How do you go about keeping the wheels turning? [116]

A. By not applying enough brake to lock them.

Q. And if you apply enough brake to lock the wheels, what happens?

A. Then the wheels come to a stop and they are locked and then you lose absolute control of the vehicle.

Q. From your experience you observed this other vehicle all the time while it was coming down the road, don't you—did you not?      A. Yes.

Q. And did it appear to you that the, from the actions of the other vehicle that the wheels had been locked on it at any time?

Mr. Goppert: That is objected to, if the court please, as calling for a conclusion of the witness, mere conjecture.

(Testimony of Earnest Byron Brownell.)

The Court: Yes.

Q. Now, if a vehicle goes into a skid on ice, you said that you must get those wheels rolling, did I understand that correctly? A. Yes.

Q. And would you do that by releasing the brakes?

A. And you set pressure and the wheels are still rolling and then you have a chance to steer it.

Q. When the wheels are locked is it possible to steer the vehicle? A. No.

Q. And when the brake is released enough so the wheels turn is it then possible to steer the vehicle?

A. Yes.

Q. And how do you go about doing that? [117]

A. Well, you have to apply pressure to your brakes as much pressure as you can and still keep the wheels turning.

Q. And that would be if you were attempting to stop the vehicle? A. Yes.

Q. And if it should just fall into a skid when brakes were applied and you wanted to take it out of the skid, how would you do that?

A. Release the brake.

Q. And would you, would it be necessary to turn your wheel too? A. Well, possibly, yes.

Q. When you have vehicles such as those involved here, that is, the Manning vehicles, and when they fall into a skid is it possible to take them out?

Mr. Goppert: That is objected to as calling for a conclusion of the witness. If you get into a skid they can do it sometimes.

(Testimony of Earnest Byron Brownell.)

The Court: Yes.

Q. Did you observe the Manning vehicle taken out of a skid?

A. The first two times. The trailer went the first time, the trailer skidded and straightened up, and the second time it almost straightened up.

Q. And the third time?

A. It went completely across the road.

Mr. Lush: That is all.

The Court: We will take a recess at this [118] time. (3:25 p.m.)

(Court resumed, pursuant to recess, at 3:45 o'clock p.m., at which time all counsel and plaintiff were present.)

Mr. Lush: Your Honor, during the recess Mr. Goppert and I have entered into a brief stipulation that we would like to read into the record. It is stipulated by and between the parties through their respective attorneys that had inquiry been made Mr. Brownell on cross-examination would have testified that he now is capable of driving a pleasure automobile which is equipped with a hand control for the brakes and a hand control for the clutch since July, 1948.

The Court: Very well. Are you ready with your next witness?



JOHN S. NICOLA

was called as a witness for plaintiff, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lush:

Q. Will you state your full name, please?

A. John S. Nicola.

Q. And what is your occupation?

A. County Sheriff.

Q. And of what county are you the Sheriff?

A. Washakie County, Wyoming.

Q. And where do you live?

A. In Worland.

Q. And is Washakie County in Wyoming the county in which [119] this accident happened?

A. Yes, sir.

Q. And how long have you been Sheriff of Washakie County?

A. I am in my fifteenth year.

Q. Did you have occasion on December 27th, 1946, to go to the scene of an accident between a Manning semi and a Burlington Trailways bus about 9.2 miles north of Worland?

A. Yes, sir.

Q. And about what time did you go to the scene of the accident?

A. I arrived there about 3:00 p.m.

Q. And were you able to determine about what time the accident had happened?

A. Well, in checking back on the time we de-

(Testimony of John S. Nicola.)

terminated it was around 2:30 as near as we could establish.

Q. When you arrived on the scene of the accident what was the condition of the vehicles as to whether or not they were burning?

A. They were both burning.

Q. And what was the position of the bus on the road when you arrived at the scene of the accident, Sheriff?

A. It was directly right angles east and west to the highway going north and south.

Q. And what direction was it facing?

A. East, slightly to the north of east.

Q. And the rear end of the bus was where with reference to the center of the road? [120]

A. Well, the extreme rear end the bumper and so to speak was, I believe, just west of the center.

Q. Just west of the center you say?

A. Yes.

Q. And where was the bus with reference to the north edge of the bridge? A. Just beyond it.

Q. Just north of the bridge? A. Yes.

Q. And where was the bus with reference to the county highway that crosses U. S. 20 at that point?

A. It was heading—the bottom of this picture is east, is it not?

Q. East.

A. It was heading east down this road.

Q. And was the bus on that highway?

A. Partly, yes.

Q. Partly? A. Yes.

(Testimony of John S. Nicola.)

Q. And what part of the bus was off on that highway? A. The rear end.

Q. And all of the forward part of the bus was on the highway, was it?

A. On this county road, yes.

Q. Yes, on this county road. Now what was the position of the tractor part of the Manning outfit when you arrived there?

A. It was setting about at this angle.

Q. To what? A. To the bus.

Q. Which hand illustrates the bus?

A. This would be the bus and this would be the tractor here. It would be about this angle. [121]

Q. It was pointing at the side of the bus generally, is that right? A. That is right.

Q. Was it pointing slightly toward the center of the bus or slightly toward the rear of the bus?

A. Slightly toward the rear, a little rear of center.

Q. And where was the Manning tractor with reference to the Highway 20?

A. Well, the front part was on the highway, front wheels were near the center, as I recall it, about the center, and the tandem duals, the drives, would, of course, be at an angle, the left one was just off the shoulder, and I think the other one was just on top.

Q. And were they on the east or west side of the road? A. On the east side.

Q. Now, Sheriff, I don't quite get this picture.

(Testimony of John S. Nicola.)

As I understand this testimony, the bus was pointed east on this road, was it?      A. That is right.

Q. And the truck was pointed in what direction on highway 20?

A. Well, it would be the front end of it would be pointing in a southwesterly direction.

Q. In a southwesterly direction?

A. Yes, so it would be in this angle.

Q. And would you say that the angle of the tractor was more southerly, that is, more north and south or more east and [122] west?

A. No, it would be south of west.

Q. It would be south of due west?

A. I would say it would be at an angle of west and southwest.

Q. Closer to west than southwest?

A. Yes.

Q. And where was the tractor that was involved in that or the trailer that was involved in that accident when you arrived there?

A. It was setting directly parallel with the highway.

Q. And where was it with reference to the highway?

A. Well, the right hand side of the trailer and the right rear wheel was just up on the shoulder and the left was in the barrow pit.

Q. And was the trailer attached to the tractor at the time you arrived there?      A. Yes, sir.

Q. And was the trailer burning at all?

A. The front part of it, yes.

(Testimony of John S. Nicola.)

Q. And the tractor unit, was it burning?

A. Yes, most of the fire on it at that time was on the tandem wheels, the rubber was burning on these; it had eight drive wheels on it.

Q. And on which side was this on fire?

A. On all the wheels on the truck, more severe in spots on some of the wheels than others, but they were all burning. The fire was coming up around the front end of the trailer. [123]

Q. And did anyone ride out to the scene of the accident with you?

Q. My Under-Sheriff, Mr. Cooke, was a few hundred yards ahead of me.

Q. He drove out in one car and you went out in another, is that the idea? A. Yes.

Q. And did you have an opportunity to observe the road coming north from Worland?

A. Yes.

Q. And what was the condition of the road coming north from Worland? A. Very slippery.

Q. Now, when you arrived at the scene of the accident, Sheriff, could you determine whether or not any of the vehicles had been moved since the accident? A. No, they hadn't been.

Q. Did you make inquiries to find out whether they had been moved? A. Yes.

Q. And you were able to learn the fact they had not been moved?

A. Yes, I was told by a group of bystanders, I couldn't name any of them today, asked if anybody bothered anything, and they said no. Of course, the



(Testimony of John S. Nicola.)

amount of fire there, couldn't anybody bother them any way not at that time.

Q. Now, did you examine the road in both directions from the scene of the accident, Sheriff?

A. For a distance, yes. [124]

Q. And about how far north did you go from the scene of the accident?

A. Well, we went up to what is commonly called the lateral, that hump in the road and beginning then the tractor and trailer tracks.

Q. And were you able to observe the truck and trailer tracks there?

A. Yes, we traced them to the truck and trailer both ways forth and back.

Q. And from your observation of the tracks that had been made by the tractor and trailer could you determine the course that the tractor and trailer had followed in coming down the road?

A. Well, there were several wobbles and wrinkles in them to begin with and then they began to come across the road at an angle to the east side of the road and finally into the barrow pit and then right along the shoulder of the road.

Q. And where did you observe the first wobbles as you described them in the tracks?

A. Well, I will have to estimate that. It was near that what they refer to the hump in the road on that irrigation ditch, just what point in exact feet I can't tell you.

Q. It was near the irrigation lateral?

A. That is right.

(Testimony of John S. Nicola.)

Q. And where did you, where did the marks indicate that the vehicles had gone into the final skid before the collision? [125]

A. Well, I believe it was about opposite Martin Lamb's driveway or just south of it, probably a little south of it.

Q. Did the vehicle or vehicles go across the road at a sharp angle or was it a long angle that they took across the road?

A. One was rather a long angle.

Q. Rather a long angle? A. Yes.

Q. And did it appear to you that, from the marks that the truck and trailer were in line with each other as they went across the road?

A. No, it didn't.

Q. Which appeared to have crossed the road first, the tractor or the trailer, if you could determine?

Mr. Goppert: That is objected to, if the court please, as calling for a conclusion of the witness. We wouldn't have any objection to telling about any marks he saw.

The Court: Well, you may inquire if from the marks discovered there he could tell which crossed the road first. Could you do that?

A. I don't believe I could, no.

Mr. Lush: All right.

Q. You said you had been Sheriff of this county for fifteen years?

A. I am in my fifteenth year.

Q. And during the course of those fifteen years

(Testimony of John S. Nicola.)

you have had the occasion to visit the scene of accidents at various times?

A. Yes, lots of them. [126]

Q. And is it part of your duties as Sheriff and do you attempt to reconstruct the scene how an accident happened from the marks and the positions of the vehicles and so forth and so on after the accident happened? A. Yes, we try to do that.

Q. And have you ever had any particular training in that field? A. Yes.

Q. And what is the nature of that training?

A. Well, I was, attended the F.B.I. Academy in Washington, D. C., where we had considerable training under experts in the field.

Q. And was part of that training you received in the F.B.I. in Washington on the reconstruction of the scene of accidents?

A. Yes, it was part of it.

Q. And how long did that school last?

A. Well, it was fourteen weeks school. We had ten days on traffic, two weeks on traffic.

Q. Two weeks?

A. Traffic to learn in general.

Q. And was that traffic training given by an expert in the field? A. Yes, it was.

Q. And when did you take that training?

A. In 1945.

Q. And since 1945 have you had occasion to examine the scene of many accidents?

A. Yes, sir.

Q. And have you had opportunity to and was

(Testimony of John S. Nicola.)

it part of your duty to reconstruct what happened at the scene of those [127] accidents from the marks and positions of the vehicles afterwards?

A. Yes, we always try to determine the facts of what happened and how it happened and if possible why and as much as we can learn.

Q. And you did examine the tracks of the tractor and trailer combination that came down the highway from the north on that particular occasion?

A. Yes, as near as we could figure out we traced them there.

Q. And did the marks that you followed going down going in a southerly direction lead up to the tractor and trailer?           A. Yes, sir.

Q. And what conclusion did you reach from the examination of those marks as to the movements of the tractor and trailer in going down that highway?

Mr. Goppert: That is objected to as calling for a conclusion of the witness.

Mr. Lush: Your Honor, I asked for the opinion of an expert.

The Court: In what respect? You mean as to whether it went in a straight line or?

Mr. Goppert: He has already testified to that.

Mr. Lush: Yes, your Honor, I believe he has but I think he has reached some other conclusion from the movement of [128] that vehicle from the examination of the tracks and being an expert on the reconstruction of movements of vehicles from the tracks and positions of the vehicles afterwards

(Testimony of John S. Nicola.)

I think it is perfectly proper for him to testify as to those conclusions.

The Court: Well, yes, I believe you could save time by letting him testify and then, of course, on cross-examination it can be fully developed.

A. Well, in my opinion from looking at the tracks the brakes were set on the vehicle.

Q. The brakes were set on what?

A. On the tractor; they appeared to be set on the tractor.

Mr. Goppert: I move the answer be stricken as being a mere conclusion of the witness.

The Court: Well, it does seem to me. Well, we will let it stand as it is and see what the cross-examination develops. I don't know how he could tell whether the brakes were set or not unless he examined the tractor and examined the brakes and found how they stood after the accident happened. I don't know what the condition of the highway, other vehicles that traveled back and forth, I can't quite see what the condition of the highway would be there to reveal to him a condition of the brake.

A. If I could illustrate for the court on that particular point. [129]

Mr. Lush: There was no further traffic through that place because the position of the wrecked vehicles prevented them from getting past, and it is the contention of plaintiff that the act of negligence of the defendant in this case through his servant was the improper application of the brakes to the tractor.



(Testimony of John S. Nicola.)

The Court: Well, we will let it stand for the time being and see what develops on cross-examination to further enlighten the court on the subject and then I will be able to tell sometime what value there appears to be, what value the evidence is really in my own opinion later.

Mr. Lush: All right, your Honor.

Q. (By Mr. Lush): Now, did you go south of the highway at the scene of the accident?

A. Well, I came from town out there.

Q. Well, did you go back south to examine tracks? A. Yes.

Q. And about how far south did you go from the scene of the accident?

A. Oh, back about Mr. Piel's driveway.

Q. And were you able to find any tracks there of a dual wheels? A. Yes.

Q. And where were those tracks with reference to the right or left hand side of the road going north? [130]

A. Well, there was one very distinct set right along the right hand shoulder of the road and it continued up to the bridge.

Q. Continued up to the bridge? A. Yes.

Q. And could you follow it then on through the bridge?

A. No, not to be definite of it because it, the heat from this burning bus it melted most of the snow and the wind had blown a lot of ashes on to the floor of the bridge so you couldn't tell that definitely.

(Testimony of John S. Nicola.)

Q. Do those tire tracks appear to you to be the marks of a bus?

A. We took them to be that, yes.

Q. And what led you to the opinion that those were the marks of the bus?

A. Well, the size of them for one thing and the appearance of brake having been applied to them they had cut down, due to the friction they had cut down in to the snow. The snow was loose on the shoulder and wasn't packed.

Q. Then it was from the fact that they were in line with the rear end of the bus and that there appeared to be application of the brakes to them that you concluded that the marks that you saw were the marks of the bus, is that right?

Mr. Goppert: If the court please, that is objected to as being misleading and a misstatement of the testimony of the witness; he didn't say it was in line with the rear wheels of the bus and he didn't say there had been any brakes applied. [131]

Q. (By Mr. Lush): I thought in the answer to the last question he said it appeared there had been brakes applied, did you not? Did I understand you?

A. It appeared that way to us there had been brakes applied to this dual which picked up the snow into the ice and gravel.

Q. Did you make that answer?

A. I didn't say the track went up to the bus.

Q. Did you make reference to the brakes of the bus in answer to my previous question? That is,

(Testimony of John S. Nicola.)

the brake marks, the appearance that track had of the brakes being applied?

A. Yes, it appeared the brake had been applied.

The Court: He said before the bus had reached the bridge. A. Yes.

Q. (By Mr. Lush): Now, did you observe any skid marks along there?

A. Well, these duals were picking up the snow. The snow was loose on the shoulder and they picked it up pretty well and spread it out, and it was pretty well clear; there was only this much snow left in that particular place, approximately three inches.

Q. About how much?

A. About three inches.

Q. And did those tracks go in a straight line?

A. Yes, they were. [132]

Q. There was no sign of side swerving or skidding to them? A. No.

Q. Had there been other traffic come up to the scene of the accident before you examined for the marks out on the edge of the road?

A. I think there had been a few, one or two cars came by that driveway we understood. There was none in there at the time we arrived; they were ordered out of there.

Q. And who ordered them out, do you know?

A. Well, I think some of the bystanders, some young man told me he had been keeping cars out of there and we continued to do it, of course.

Q. To the best of your information, knowledge

(Testimony of John S. Nicola.)

and belief were there any dual wheel vehicles beyond Sam Piel's driveway after the accident and before you arrived?

A. I never knew of any, no.

Q. Is there a shoulder along the road on the east side of the road for the full length that is shown on the map with the exception of the bridge area?

A. Yes.

Q. And was there a shoulder on the west side north for the entire distance shown on that map with the exception of the immediate bridge area?

A. Yes, the construction there is two foot shoulder outside of the pavement.

Q. And how wide is the oilmat? [133]

A. The oilmat is 22 feet.

Q. And the shoulders are 2 feet on each side beyond that?

A. Yes.

Q. And how wide is the bridge, do you know?

A. 24.

Q. And how long is the bridge?

A. 20 feet and some odd inches, 3 inches, I believe.

Q. Now, Sheriff, will you describe the barrow pits on each side of the road, that is, the east side and the west side from the point of the irrigation lateral down to the bridge?

A. Well, they are just about the ordinary run of barrow pits.

Q. About how deep would they be?

A. Oh, from road level I would say to the best of my knowledge probably from road level to the

(Testimony of John S. Nicola.)

lowest point of the barrow pit possibly 3 and one-half feet.

Q. And about how wide were they?

A. It is hard to tell.

Q. Approximately?

A. There is an, irrigation ditches in there and trees.

Q. Do you mean they would vary in width from place to place?

A. At times. Sometimes the Highway Department lets them build waste ways along the barrow pit. There is variation but [134] I would hate to say how wide they would be along there. To the best of my recollection, though, they should be somewhere around 20 odd feet from the shoulder of the road to the fence.

Q. From the shoulder of the road to the fence would be about 20 feet?

A. Yes, that would be as fair an estimate as I could think of from my recollection of it. Your depth varies also depending on construction work that was done.

Q. Sheriff, I ask you to look at Plaintiff's Exhibit 1 and tell us what the width of the right-of-way was at the points indicated? A. 50 feet.

Q. Is that 50 feet total right-of-way or 50 feet from center to center, can you tell us?

A. It indicates 50 feet from center to center or center of the highway to the fence.

Q. So that one if the road would be probably represented by about 11 feet of blacktop and 2 feet



(Testimony of John S. Nicola.)

of shoulder and the remainder barrow pit of a 50 foot strip, is that right?

A. Yes, that would be.

Q. Would it be possible to drive an automobile or truck into one of those barrow pits?

A. That would all depend on where it was located.

Q. Pardon?

A. That would depend on where it was located and how you went about it. [135]

Q. Can you more accurately describe this wobble that you first testified to that the truck tracks, either the tractor tracks or trailer tracks indicated it made?

A. Well, I don't know if I can or not. There seemed to be a couple swings there if I recall it correctly and then gradually crossed the road. That is the best recollection I have.

Q. Did it appear to you that the truck had straightened out between those two first jogs?

A. I can't say as to that, no.

Q. Were you able to trace the path of it just back of the Sam Piel driveway, that is, south from the Sam Piel driveway?

A. Not to be definite. We thought we could but not to be definite due to this fact of traffic going in and out of the Piel driveway taking injured people to town. We found this same track a few feet south of there and traced it. There had been some traffic on that.

(Testimony of John S. Nicola.)

Q. Was traffic being stopped and turned at the Sam Piel driveway, is that the idea?

A. That is right. Nobody was allowed north of there.

Q. Did you testify that the trailer in your opinion had gone into the barrow pit during the final skid before the collision?

A. That is where it was when it was stopped. It was in the barrow pit there and had been in it for several feet. [136]

Q. And from what marks did you conclude or from what evidence did you conclude that the trailer had been in the barrow pit for several feet?

A. Well, the tracks immediately back of it and its location.

Q. Did those tracks lead right up to the trailer wheels or not?      A. Yes, they did.

Q. And were there marks leading right up to the tractor wheels also?

A. They were up as far as to the point where the heat had melted them down from the rear wheels when they were burning.

Q. And how far away from the truck would you say that the heat had melted those tracks?

A. I would just have to estimate a few feet the heat had melted a spot around there.

Q. And did the marks that were made that you concluded were made by the tractors wheels stay up on the highway and shoulder at all times or did those marks go down into the barrow pit?

A. I believe what we determined to be the right

(Testimony of John S. Nicola.)

hand wheel, the right hand side of the truck and probably both the front wheels I don't believe ever got into the barrow pit.

Q. The front wheels never got into the barrow pit at all? A. It didn't appear that way.

Q. That is of the tractor?

A. That is of the tractor. [137]

Q. And the rear wheels of the tractor, did they get into the barrow pit?

A. They were sort of straddling the shoulder sort of at an angle like this. I don't know if I could explain what they looked like but that is as near as we could determine by looking at what tracks was available.

Q. Now, Sheriff, you mentioned the highway fence, I believe. Is that a fence that is strung along the edge of the right-of-way?

A. Yes, it constitutes the right-of-way fence there.

Q. And what kind of a fence is that, do you remember? A. Just barbed wire fence.

Q. Barbed wire fence?

A. My recollection of it is just barbed wire.

Q. And it is held in place by poles, is it?

A. Posts, yes. Cedar posts.

Q. In your opinion, Sheriff, would that fence be strong enough to stop a motor vehicle that ran into it with any speed? A. No, I don't think so.

Q. And did that fence extend north and south for both sides of the bridge?

A. Well, it extended north from the, from that

(Testimony of John S. Nicola.)

county road and from the right-of-way of that extending north from there.

Q. In other words, there is a gap in the fence wherever [138] there is a driveway or county road or township road or anything else? That runs pretty extensively along there? A. Yes.

Q. Sheriff, what is the condition of the road north of the scene of the accident, particularly from that irrigation hump on northward with reference to whether it is straight or crooked?

A. It is straight, generally.

Q. And for how far back is it straight?

A. I would say two miles north.

Q. And did you go to the hump that is caused by, at which this irrigation lateral is located to trace the tracks of the truck?

A. I went up to the end of where the vehicle began to make a skid.

Q. And you estimated it was back about at that hump, did you not?

A. I believe it was pretty close to it.

Q. And could you see northward on the road from there? A. Yes.

Q. And about how far would you estimate that you could see northward from that point?

A. Well, I believe that the surface of the road would be viewed for a quarter of a mile.

Q. How far? A. Quarter of a mile.

Q. Quarter of a mile?

A. There is another rise in the road. [139]

Q. And did you observe any difference in the na-

(Testimony of John S. Nicola.)

ture of the snow and ice covering, that it, that was visible on the road north of the scene of the accident from that which prevailed south of the scene of the accident?

A. We looked up and down the road there and my recollection is that there was considerable snow on the road as I remember it.

Q. And when you walked north to the place where the truck had first skidded did you observe whether or not the road was icy north of the scene of the accident?

A. No, I couldn't tell anything about the ice.

Q. Over that portion which you walked?

A. That was pretty slippery.

Q. That was pretty slippery?

A. As I said there was a lot of traffic over there prior to that and that was pretty well packed.

Q. And you observed no difference between the look of the road from the scene of the accident north as far as you walked there from a point, the north most point to which you walked and as far north as you could see?

A. My recollection is there was considerable snow on it. We looked down the road. We didn't go down to examine it. We looked to see where the tracks started and my recollection is there was some snow on the road.

Q. Now, in looking for those tracks had the snow stopped [140] abruptly any place in the next quarter of a mile down the road you would certainly have observed that fact, would you have not?



(Testimony of John S. Nicola.)

A. I don't recall any abrupt stopping of the snow. No, I don't.

Q. And you were looking at that snow for tracks?

A. Yes, we were, and looking to see where they started.

Q. Now, were there any obstructions along the side, south side, along the east side of the road that would prevent a man from driving a truck off the road and out in the field other than the fence?

A. On the east side?

Q. Yes.

A. Oh, I think it could have been done.

Q. And how about the west side north of the scene of the accident?

A. Well, that was a little deeper barrow pit over there. If I remember correctly, it is quite a little bit deeper and steeper on that side.

Q. And are there trees, some trees growing along in there?

A. Yes, there is on that irrigation ditch on the fence line there.

Q. And in your opinion, Sheriff, could a truck be, have been safely driven down into that barrow pit?

A. To the right?

Q. Yes. [141]

Q. I would hate to say on that because my recollection is it is pretty deep, pretty deep.

Q. And does that depth you recall continue on down to the county road?

(Testimony of John S. Nicola.)

A. Yes. There is farm driveway in there and another section of the barrow pit.

Mr. Lush: You may cross-examine.

### Cross-Examination

By Mr. Goppert:

Q. Mr. Nicola, you have been Sheriff of Washaskie County, Wyoming, for the past fifteen years?

A. Oh, I soon will be—I am in my fifteenth year now.

Q. And you went out to the scene of this accident on the afternoon of December 27th, 1946, did you not?      A. Yes.

Q. And when you got to the scene of the accident you found a bus, as I understand it one of these Burlington buses setting across the north side of the bridge across the roadway to the north of that bridge?      A. Yes, sir.

Q. And the front end headed out into the roadway, that county roadway that heads to the east?

A. Yes, it was east.

Q. As I understand your statement the west end of that bus extended west of the center line of the highway U. S. No. 20? [142]

A. I think it was a little west of it.

Q. As a matter of fact it extended west to an extent that you could not pass a vehicle in behind it and the west rail of the bridge, could you?

A. That is right.

Q. To get it right down to measurements in esti-

(Testimony of John S. Nicola.)

mation wouldn't you say it extended to a distance four feet from the west side of the highway?

A. No; not if I was estimating it, no.

Q. Well, what would be your estimate from the west side of that highway to the west end of that bus?

A. I think I said before it was 6 or 7 feet from the west bridge rail to the end of the bridge to the best of my recollection.

Q. And then was it 6 or 7 feet from the west edge of the bus to the west edge of the roadway?

A. That would be a fair estimate, yes.

Q. Then the bus extended easterly from a point 6 or 7 feet from the west edge of the highway clear across that highway and from some distance down the county road?

A. It was a few feet out in the county road, yes.

Q. About how many feet would it extend east of the east edge of the highway, the front end of it?

A. Well, that would be pretty hard to tell. It was so hot we couldn't measure it and part of it was burned off at that time. [143]

Q. Well, the remains were still standing and what would you say would be your best estimate where that bus stood to the east edge of the highway?

A. Let me look at a picture here.

Q. Okay.

A. I can get it a little bit better in my mind here. There is this bridge rail right there and there is this door on the bus and the front end back in there burned off so it is hard to tell.

(Testimony of John S. Nicola.)

Q. You didn't estimate?

A. No, I couldn't. I wouldn't know exactly how many feet.

Mr. Lush: May I see that picture.

Q. (By Mr. Goppert): Now then anyway it is far enough east to cover the full length of that bus, whatever the length of it was, for the distance of 6 or 7 feet east of the west edge of the highway?

A. Yes, and took up the whole length of the bus.

Q. And if the bus was 35 feet long and the road was 22 feet wide and the rear end of the bus was 7 feet from the west edge, the front end was 20 feet east of the east lane of the highway, wasn't it?

A. That is possibly.

Q. Well, is that the way you remember the picture of the bus setting there when you came to the scene?

A. I remember it just like it is in this picture and that is just the way it was. As to the footage it was from this [144] point to that point and is purely an estimate with me.

Q. And that would be true of your estimate of the west end of the bus; that might be 3 or 4 feet from the west edge of the highway?

A. I doubt it. It could be but I don't think so.

Q. You think it was 6 or 7?

A. I would say it was approximately 6 feet from the bridge rail.

Q. Now, let's pass on to the location with reference to direction. Did I understand the bus was approximately due east and west?

(Testimony of John S. Nicola.)

A. The front end of it was just a little north of east.

Q. That is what I understood you to say, a little north of east, say a couple feet out of the way?

A. I wouldn't get down to a couple inches on it.

Q. With reference to the roadway it was a little bit to the north of east?

A. Yes, it would be a little bit north and east.

Q. And you mean then very little for the full length of the bus?

A. It would be very little, that is right.

Q. And let's pass on to get the location of the bus with reference to the closest place from the bus to the east banister of that bridge. About how far was the bus north of the east banister of the bridge? That would be the righthand side of the bus. [145]

A. The boys have it down on the report as 3 feet.

Q. Well, was that your recollection of it?

A. I would say that is about right. We walked in between after it got cooled down and we packed a couple bodies out between there.

Q. Then did you observe that the right front wheel of the bus was actually setting up on that county road?

A. It was on the dirt, yes.

Q. It was on the dirt, yes. It wasn't saddled over into the ditch, was it?

A. The right front wheel?

Q. The right front wheel?

A. Well, not to my recollection. It was right on the edge.

Q. It was right on the edge but it wasn't sagging down?



(Testimony of John S. Nicola.)

A. That road was very poor there. It was a very poor road. It slips off there and very narrow.

Q. But you observe the portion of the bus that had apparently come in contact with some other object?

A. Yes, sir.

Q. What part was it?

A. The left front corner and the bus was damaged back pretty well toward the middle along the left side it was buckled along there.

Q. It had buckled down by the time you saw it?

A. It buckled and caved in this way there. In other words [146] there was a couple big marks in it.

Q. Had the top burned out at that time?

A. Yes, the top was burned out.

Q. And the left side was swerved over?

A. No.

Q. Was turned over? A. No.

Q. It hadn't gotten into that condition yet?

A. It was just beginning to fall in, the roof when I got there.

Q. This mark you found on this bus was on the left front corner, was it not?

A. The what I found?

Q. This real damage that you saw where there had been a point of impact was on the left front corner, was it not?

A. Yes, that is the major damage.

Q. And that was caved in about how much would you say?

(Testimony of John S. Nicola.)

A. Well, I wouldn't say on that because it was all——

Q. Was it 6 inches or 1 foot or 2 feet?

A. No one could tell anything about that. The major portion of the fire was in the front end.

Q. At that time it burned down so you could not tell how much of a dent it got on the left front corner?

A. It was pretty well burned down.

Q. Now, isn't it a fact, Mr. Sheriff, that the rear wheels of that bus were duals and they never did burn in that fire?

A. That is right.

Q. Now then, let's take the next vehicle that you saw on [147] the north of that. It was the tractor portion of a semi-trailer, was it not?

A. Yes.

Q. It was a West Coast Special, is that right?

A. Yes, International.

Q. And as I understand you when you described that to the court a little while ago you showed with your right hand and pointing again with your left hand the approximate angles that those two vehicles bore to each other, did you not?

A. That is right.

Q. And as I recall it, and you tell me if this is not right, you showed the front end of the bus pointing toward the left side, I mean the front end of the truck pointing toward the left side of the bus at a point somewhere considerably in front of the rear end of that bus?

A. It was almost center.

Q. How?

A. It was almost center, probably a little back of the center.

(Testimony of John S. Nicola.)

Q. It was almost in the center but as you say the front end of the bus pointed a little back of the center of the bus?

A. The front end of the truck.

Q. I mean the front end of the truck. Now, that would be then a distance of approximately we will say 10 to 12 feet east or forward from the rear end of the bus on its left side, would it not? [148]

A. Well, it all depends on how the bus was over the rear wheels; I don't know that.

Q. And you said it was near the middle of the bus, a little to the rear?

A. I believe it was a little to the rear.

Q. Now, that bus we will just take it for granted was 34 to 35 feet long, and you mean by that description it was somewhere just to the rear of 17 feet from the rear end, or 17 feet from the front end, whichever you want, you think?

A. Well, it was back of the center of the bus as near as I remember it.

Q. Just slightly, isn't that right?

A. I wouldn't say slightly, any certain distance because I don't remember. I didn't measure it.

Q. Now then, the angle at which the point, I believe you put that at approximately one-half a quarter circle, which would be 90 degrees, and that is a quarter circle being 90 degrees, and half of it being 45 degrees, approximately that, was it not?

A. Well, there wasn't any degree or anything of the kind. It was just setting at an angle to the bus.

(Testimony of John S. Nicola.)

Q. And taking a square corner of it and just 90 degrees; would you split it in two?

A. I don't understand degrees at all.

Q. I am trying to make the sense and still get in the [149] record. You put your hand at the angle you did a moment ago and show the Judge and me just the angle and we will try to figure out what we are describing.

A. That would depend on what point at which you start for on the angle.

Q. Would you put your hands together like you did a while ago?

A. It appeared to me they were setting at about this angle.

Q. You split that thing about half way in two of a square, don't you?

A. I am going by my photograph recording here. As I remember it, Mr. Goppert, right there that is quite a little angle if you look at it this way, or if you pay attention to the front end of the truck there isn't much at all, but if you locate the rear end of the truck there is quite an angle.

Q. I don't know whether we have got the angle in the record at all but I am going to pass it on. It was somewheres between a quarter, and I mean a half of a quarter, and less than that, wasn't it? If you split, you take this envelope and that thing there is approximately one-quarter of an angle and was it approximately that angle with reference to the bus?

A. Well, it would be similar to this.

(Testimony of John S. Nicola.)

Q. You would put it down to about one-third of the quarter angle then, would you not? [150]

A. Well, I tell you I am not an engineer. All I can remember is what I saw and what I have a photograph record of.

Q. Could you draw a diagram on a piece of paper that would show the approximate angle that that one bore to the other at that time?

A. Oh, I could come somewheres close to it.

Q. You would place it somewhere between  $\frac{1}{3}$ rd and  $\frac{1}{4}$ th wouldn't you?

A. I wouldn't know about that  $\frac{1}{3}$ rd and  $\frac{1}{4}$ th business.

Q. All right. I guess we will just leave that angle undefined.

A. I have a very good picture there.

Q. You say it sets just like it does in a certain picture, does it not?

A. Yes, that is as I photographed it within five minutes after I got there. And here is another one taken from a different angle. That is rather dim. That would give you a better idea how far back of the rear end of the bus it was.

Mr. Goppert: Do you offer these?

Mr. Lush: I won't offer them but I won't make any objection if you offer them.

Mr. Goppert: I want to get the pictures in, if the court please.

The Court: All right. No objection. [151]

Q. (By Mr. Goppert): Handing you Defendant's Exhibit 2, is that a picture that you had taken



(Testimony of John S. Nicola.)

or obtained that showed the exact relative location of the truck and the bus?

A. Yes, sir, that picture was taken at my direction.

Q. Do you know who took it?

A. Dee Benson of Worland, Wyoming.

Q. Handing you Defendant's Exhibit 3, does that show the relative location of the truck and bus and the trailer on the highway?

A. That is right.

Mr. Goppert: We offer these in evidence and ask that they be received as Defendant's Exhibits 2 and 3 respectively.

Mr. Lush: No objection.

The Court: They may be received in evidence.

(Whereupon said Defendant's Exhibits Nos. 2 and 3, being photographs of the scene of the accident and equipment, offered and received in evidence, are a part of this record.)

Q. (By Mr. Goppert): Mr. Nicola, will you tell us how far the front end of that truck stood with reference to the center of the highway at the time you got to the scene of the accident?

A. In my best recollection of it the front end of the front wheels were right near the center of the oilmat.

Q. And do you mean the front end, the front wheels were both right near the center? [152]

A. Yes, approximately at, I don't know, the bumper might be a little west of the center. I

(Testimony of John S. Nicola.)

couldn't be sure but as I recall it they were pretty well in the center.

Q. Your best recollection is that very little of the bus was over on the west side of the highway?

A. No, we are talking about the truck.

Q. I mean of the truck, beg your pardon.

A. Yes, the front end of it was as I recall it was pretty well—see, it wouldn't be as far toward the center if your truck was at right angle to the road. It would be sort of being at an angle. It takes up less distance, see, so your front end as I recall it was approximately in the center of the road.

Q. Then this rear end of the trailer extended out into the barrow pit, I mean of the truck extended out into the barrow pit on the east side of the road?

A. Yes, it was on the shoulder, over the shoulder.

Q. Do I understand that the right rear wheels of the tractor of this truck were partly on and partly off the shoulder of that road?

A. Yes, they were hanging over. It is a dual tandem drive; part of them were over in the barrow pit.

Q. You observed that those wheels were 11 inch tires with 22 inch center, did you not?

A. No, I didn't. They were all afire at that [153] time.

Q. And the front ones never burned, did they?

A. No. We didn't pay any attention to tire sizes.

Q. You didn't pay any attention? A. No.

Q. Wouldn't you estimate that they were approximately 44 inches over all, each of them?

(Testimony of John S. Nicola.)

A. You mean the tandems?

Q. Yes.

A. I wouldn't know how to estimate that.

Q. Making the two tandems from front to back without any space between them 88 inches?

A. Well as I tell you I don't know what the sizes were. They could be as circular as a bicycle tire as far as I am concerned because they were all a mass of fire. I couldn't make any accurate statement on that.

Q. Yes, but that exhibit 3 shows it plainly?

A. Yes, there's some better than that. Here is your front tandem, and the rear.

Q. Those rear on the trailer never burned, did they?

A. My recollection was they did.

Q. The rear tandems on the trailer?

A. I mean the tractor. We are talking about the rear end of the tractor now, not the trailer. No, there was no damage to the rear end tires of the trailer to my recollection.

Q. I want to get your location. That tractor stood there at that angle as you gave it, whatever it was, headed kind of [154] southwest, was it not?

A. Slightly, yes.

Q. And northeast?

A. Yes, the rear end between east and northeast.

Q. And the trailer was hooked on to it with a trailer hitch right in the middle of the dual double drives?

A. I think they have what they call a turntable on there.

(Testimony of John S. Nicola.)

Q. And that is right in the middle of the dual drives, isn't it?

A. That is where it appeared to be, yes.

Q. And the trailer that was how long?

A. I don't know how long it was, 25, 30 feet, I presume from the looks of it.

Q. 25 to 30 foot trailer stuck out into the barrow pit on the east side of that roadway with its left dual tandem up on the shoulder?

A. The right ones. The left ones.

Q. Right ones, I beg your pardon. And the left ones in the barrow pit? A. That is right.

Q. Now then the over-all length of this vehicle, this semi trailer was about 40 to 45 feet long, wasn't it? A. I don't know. I didn't measure it.

Q. Did you estimate it?

A. Well I estimate it from my recollection, 25 to 30 foot flatbed trailer.

Q. The flatbed 25 to 30 feet?

A. The entire trailer. [155]

Q. And the tractor part would be about how long in your recollection?

A. Well the size of that outfit must have been in the neighborhood of 20 feet from bumper to rear end bumper.

Q. That is on the tractor portion but a part of that would be taken up in the hitch?

A. Yes, part of that length would be taken up by your trailer hitch.

Q. Possibly 5 feet or so?

(Testimony of John S. Nicola.)

A. We didn't measure the length of it. It is just a recollection.

Q. Now then you told about those fences on this roadway and the barrow pit. You are acquainted with the barrow pit coming from the south up to the bridge? A. That is right.

Q. And they are not very deep there and they are on either side of the road?

A. They get deeper as they go toward that drainage ditch.

Q. That is when you get to within 25 to 50 feet?

A. They drop down for drainage.

Q. They are not very deep by these driveways?

A. No.

Q. In fact it has been leveled up?

A. South of those driveways they did reconstruct those there. [156]

Q. Isn't it a fact the one on the south side isn't over 18 inches deep between this driveway and the bridge?

Mr. Lush: Identify "these"; I can't follow you.

Q. Between the driveway on the west side of the road and the bridge?

A. No, it is my recollection it is quite a lot deeper than that. Maybe I am not a very good judge of depth.

Q. Anyway any vehicle that went out there and went through that fence would have to jump up whatever the depth of them was on to the farm land?



(Testimony of John S. Nicola.)

A. As I say some of the barrow pits are different.

Q. And there is an irrigation ditch along this line that appears north of the bridge?

A. Yes, there is an irrigation ditch along that fence line.

Q. And doesn't it come right along those trees?

A. Well I couldn't locate it and I know it is right by the right-of-way fence. It crosses the road up north and goes under.

Q. Now then we want to back up to these tracks. You got there at about 3:00?

A. Approximately, yes.

Q. And at that time the fire had consumed the bus you say so that it had broken down between the front and rear wheels?

A. No, it hadn't broken down.

Q. Well it was sagged down?

A. It was falling through, the top was falling through [157] and going on through, yes.

Q. And you checked for tracks on the south side of the bus, that is, of the ones that the bus might, the course that the bus might have taken?

A. South of the bridge, yes.

Q. And did I understand you to say that you checked them clear to the Piel driveway south of the bridge on the south highway?

A. We followed them about as far as they were clear and they went out at that driveway.

Q. And who was with you to follow them?

A. I don't know now.

(Testimony of John S. Nicola.)

Q. Mr. Lamb go with you?

A. I don't think so.

Q. Mr. Keith Ward hadn't gotten there?

A. If it was anybody it was my Under-Sheriff.

Q. Mr. Cooke?

A. If anybody helped me it was him.

Q. You don't know for sure?

A. We were pretty busy about that time.

Q. You say we were pretty busy?

A. That is right.

Q. And what you saw as I understood your testimony here was a place out on the east side of the roadway that went practically straight from the Piel driveway to the bridge that showed dual marks, dual wheel marks?

A. That is right. That is what it was. [158]

Q. And that they cut down in the snow you showed was approximately 3 inches thick and most of the snow you said was kicked out?

A. Yes, sort of done.

Q. And they showed braking motion or action?

A. It appeared that there was braking of the vehicle.

Q. And they also showed that the wheels were sliding, didn't they? A. No, it did not.

Q. Now you recall testifying in this case once before, don't you—I mean on this question once before? A. Yes.

Q. At Worland in December, 1947?

A. That is right.

Q. I want to hand you testimony that you gave

(Testimony of John S. Nicola.)

at Worland, a copy of the testimony that you gave at Worland in December, 1947, when you were being cross-examined by Attorney J. L. Rice—you remember him cross-examining you?      A. Yes.

Q. And you remember, do you not, these questions and these answers? We will start in here and I will read them. Do you need anything to help you read it?      A. No, sir.

Q. Now you were handed an exhibit that was therein called P.D. 18. I will hand you that same; p is that P.D. 18?      A. Yes.

Q. Do you remember seeing that exhibit at this time?      A. Yes.

Q. And you remember this "X" mark?

A. I took the pictures. [159]

Mr. Lush: Your Honor, I object to identifying points on the photograph unless it is put in evidence. I mean the record will be completely blank as to what X marking is referred to or anything else.

Mr. Goppert: Handing you this picture marked Defendant's Exhibit No. 4, would you state if you took that picture?      A. I believe I did.

Q. That is the same one that was marked originally as P.D. 18?      A. Yes.

Q. You observe that?      A. Yes.

Q. And were you then asked that you put your mark on here with an X? Do you remember marking that?

A. I initialed the mail box there.

Q. You initialed the mail box?

(Testimony of John S. Nicola.)

A. I don't know whether I put that on there or not.

Q. Now I want to read you the questions and answers. The ditch we have been speaking of extends from the point in this picture, does it not, between this here and the white house. Now that white house is the Lamb house? A. That is right.

Q. And your answer was: Yes, sir, that is right. Is that correct? A. Yes.

Q. I believe it was with reference to this picture that you spoke of skid marks extending from the point you have marked X south of the bridge?

A. Yes. [160]

Q. And didn't you answer: They were only clear to that point so that you could tell what they were. That means to this X point?

A. Yes, between here and there. This is the Piel driveway here, the mail box.

Q. Describe the skid marks, please?

A. They were approximately 24 inches wide and laying along the shoulder of the road. That is correct, isn't it? A. Yes.

Q. Approaching the bridge from the south they continued straight along the easterly side of the road from the X mark to the bridge?

A. Yes, sir, there were several, some partially extending part of the way on the left side but part of it had been obliterated by traffic.

Q. That was the answer, wasn't it?

A. Yes.

Q. And the next question. The skid marks you

(Testimony of John S. Nicola.)

last mention would be ones made by the lefthand wheel of the vehicle going north? And you said: Yes, sir.

Q. And that should have been "No, sir"?

A. That is a typographical error or something and is wrong because anybody would know it.

Q. That should have been righthand?

A. That is right.

Q. The next question. The one first referred to along the shoulder of the road was a mark of a wheel and that had [161] been going northerly toward the bridge? Yes, the snow pushed out and indicated that distinctly. Was that your answer?

A. Yes.

Q. Then the next question: Oh, they were the skid marks and wide mark of a wheel? Answer: Yes, in the snow.

Q. What caused them in your opinion?

A. Answer: The wheels were sliding.

Q. Did you so testify at that time?

A. They could have been sliding.

Q. That is what you saw?

A. They could slide or the brake friction could pickup the snow. They might partly slide part of the time and then run over it and pick it up again.

Q. When you were being asked that question at that time you said those wheels were sliding?

A. I think I said it appeared to be sliding.

Q. But it reads the wheels were sliding is your answer?



(Testimony of John S. Nicola.)

A. I would still say my answer is they appeared to be sliding.

Q. Now then they appeared to be sliding. If they appeared to be sliding, don't they still appear then more or less marks of sliding wheels?

A. The snow was pushed clear down to the gravel and had appearance they had been sliding and they may not have been. I wasn't there. [162]

Q. And effort was being made to stop you think and on one of the skid marks the snow was off clear down to the pavement?

A. Cut it right down.

Q. In other words, there wasn't any snow left on those marks at all?

A. Not any appearance of the marks; it didn't sweep it clean like the floor here.

Q. Those marks went for a distance as I understand you from the north side of the Piel driveway for certain possibly from south of the Piel driveway for a distance clear up to the bridge, is that right?

A. We traced them to the bridge. Yes, they were pretty well clear all the way up.

Q. Approximately 150 feet?

A. I don't know exactly how far that is. It wouldn't be any more than that.

Q. If we went south of the Piel driveway they would be 200 feet?

A. They didn't go south.

Q. You are not sure of that?

(Testimony of John S. Nicola.)

A. I am not. There was too much traffic beyond there.

Mr. Goppert: We wish to offer in evidence, if the court please, this Defendant's Exhibit 4.

The Court: It may be received in evidence.

Whereupon said Defendant's Exhibit No. 4, being a photograph [163] of scene, offered and received in evidence, is a part of this record.

The Court: We will suspend here. (5:05 p.m.) Court adjourned until 10:00 o'clock a.m. May 17, 1949.

Court resumed at 10:00 o'clock a.m., on May 17th, 1949, at which time all counsel and plaintiff were present.

Mr. Jameson: If the court please, I would like to move the admission for the purpose of this case of Mr. Jerry Housel.

The Court: Very well, Mr. Housel may be admitted for the purpose of this case.

Mr. Lush: If the court please, we have obtained permission of counsel and would like permission of the court to call Dr. Goshardt, of Worland, in order that he may testify now and return to his practice.

The Court: Very well. [164]

\* \* \*

JOHN S. NICOLA

resumed the stand and testified as follows:

Cross-Examination

(Continued)

By Mr. Goppert:

Q. You are the same John Nicola who was on the stand yesterday when we adjourned court, were you not?      A. Yes, sir.

Q. And I was interrogating you at that time concerning the skid marks or evidence of skid marks that appeared south of the bridge at the point of this collision or near the point of collision.

A. I believe that is right. [165]

Q. And I believe you had located a set of marks on the east side of the roadway leading up to the bridge from the south which we were inquiring as to whether or not they showed evidence of skid or just a braking. Did I understand you to say that your statement at Worland in December, 1947, should have been that they appeared to be, that the wheels appeared to be slipping?

A. Yes, that is what my intended answer was. There may have been an error there, I don't know.

Q. Directing your attention to the record of that deposition you were asked the question: Did you observe upon the highway any tracks approaching from Worland indicating the skid marks of a vehicle in the immediate vicinity of the accident or leading from any vehicle in the accident? And I believe you answered: There was skid marks or what appeared to be behind both vehicles.

(Testimony of John S. Nicola.)

A. Yes.

Q. That was correct?

A. That was from the bridge south I meant, yes. As I told you before it was melted on the bridge. I may have been confused as to which vehicle he was talking about, but the marks could only appear south of the bridge because the snow was all melted on the floor of the bridge.

Q. You drove out to the scene of that accident in your car as I understand it?

A. Yes. [166]

Q. And you got there by fifteen minutes to three or some such time as that?

A. I don't know exactly. I thought it was around three o'clock.

Q. About three and did you drive speedily?

A. Well, I wouldn't say so speedily. I think I drove to the best of my recollection 50 miles an hour.

Q. Going out there?

A. I thought as fast as I could, some places faster than others.

Q. And isn't it a fact you came near to piling up two or three times yourself on the way out?

A. That is correct. I hit several spots.

Q. Did you put on your brakes at that time?

A. No.

Q. In other words, you mean you skidded two or three times on your way out?

A. I skidded a little but I followed my skid and came out of it.

(Testimony of John S. Nicola.)

Q. And that happened two or three times on your way out to the scene of the accident?

A. Yes, it was corrugated road and the snow was deeper and some portions of the road the snow was packed that deep.

Q. You are holding your hands how far apart?

A. Three inches. It would pack up and get a wavy spot and clear off and you come up on one of those and hit it and it [167] would put you into a skid.

Q. You hit these waved spots on the road and it would skid you?

A. Sort of corrugated.

Q. That was just a passenger car, wasn't it?

A. That is right.

Q. When you say you came near to piling up two or three times you meant you had considerable of a skid?      A. That is right.

Q. Side motion of say 3 or 4 feet?

A. Yes. I could feel it coming and then I would go with it and straighten up.

Q. You knew you were going too fast for safe driving?

A. I found it out for that particular spot right there, yes, and then I would slow down.

Q. And then you would get back up and then slow down?

A. Whatever I deemed I could make the best time. I was in a hurry.

Q. You were taking some chances?

A. I presume I was.



(Testimony of John S. Nicola.)

Q. And on part of the trip you got down as low as 30 miles an hour? A. I believe I did.

Q. Believing it was not safe in your great haste to go faster than that?

A. Yes, I probably was down to that at times. My speed [168] varied to what conditions of the road I could see in front of me; that would be the facts.

Q. When you got there had Mr. Keith Ward arrived there, the Highway Patrolman from Basin?

A. No.

Q. Did he arrive when you were there?

A. Yes.

Q. He was with you then when a part of this inspection was made?

A. Yes, he was around about there.

Q. In fact he was with you when you attempted to look for tracks?

A. I don't remember who was with me. We were looking all over with different ones at different times and I don't remember who I was with at a certain time.

Q. You don't know who was with you when you inspected for skid marks?

A. No, I don't. I thought it might have been my Under-Sheriff. I am not certain of that. I may have been alone. We made two or three trips to look at these tracks. It is awfully hard to determine anything exactly in a case of that kind under those circumstances just with one look.

Q. Now then I believe you testified that you observed or rather you gave as an opinion that you

(Testimony of John S. Nicola.)

observed something that convinced you that the brakes on the tractor on the semi had been set. Did you examine the brakes?

A. No, I didn't. There was too much fire. [169]

Q. Too much fire to say whether or not they were set or not? A. That is right.

Q. You never did make an examination of either vehicle to see if any brakes had been set?

A. You couldn't have determined that. There was no way to tell with the amount of fire. It had been consumed to such an extent when I arrived you couldn't tell that.

Q. Now that conclusion you drew about brakes being set was based entirely on the fact that you find skid marks, wasn't it?

A. Which vehicle are you talking about now?

Q. Well, on either of them?

A. Well, it did; they did have the appearance of skidding. Sometimes I have found in previous investigations that loose snow it will pick up and sort of plow it and get on top of it and pick it up again and if it has the appearance of sliding whether or not it is I can't tell. Frankly, I don't know. I have talked to drivers under those conditions and they say no, their wheels were not sliding.

Q. That is all verbal and you haven't made a test to see if it makes skid marks without sliding?

A. No, I never did.

Q. As a matter of fact, you couldn't tell whether a mark is made by a skidding or sliding wheel; you can't tell whether it was sliding forward or sideways? [170]

(Testimony of John S. Nicola.)

A. Oh, yes, you can tell if it is going sideways.

Q. Well, if it is going sideways can you tell whether or not it is doing that because of the application of the brakes?

A. Well, you can tell whether or not it is sliding or whether it has any forward motion of the wheels. If it has any forward motion conditions back of the wheels there would be some indication of it there. If there was just a straight smooth mark in my opinion it would indicate that it was sliding.

Q. And that would be true whether the brakes were on or whether it was sliding sideways?

A. I am talking about an actual skid.

Q. That is what I am talking about, either slide or forward skid?

A. If the wheels went in forward position and then you see if it was, back of it there would be some indication of it, although it was skidding sideways; if it was just a smooth mark across the ice or snow, it would indicate it had no forward motion, no traction.

Q. But the fact that there is a skid appears in the snow is it evidence whether brakes were on or off?

A. It depends on which way it was going; it could be or could not be. It is purely based on appearance.

Q. Then you base it on the fact it skidded across the [171] road?

A. And there was no sign of any forward motion or traction. In other words, any heavy tire, even a

(Testimony of John S. Nicola.)

car or anything else, if there is any forward motion would leave a mark if skidded sideways.

Q. If it could get through the ice?

A. Yes, if in the ice or dirt or weeds there would be some signs of the forward traction power of the wheels.

Q. Now so far as this skid track south of the bus was concerned south of the bridge that was only a dual set of tracks that showed skid marks in the skidding forward and they extended from the Piel driveway to the bridge south of the bridge, did they not? A. Yes, approximately that.

Q. And you couldn't tell from looking at those whether they connected up with this bus or whether they were made by some other vehicle that had recently traveled that highway before the accident, could you?

A. The snow and ice was melted off the floor of the bridge. We traced them up to the bridge and due to the size of them and the apparent dual there and the freshness of them we figured they were the tracks of the bus, yes.

Q. But they could have been made by any other vehicle that was equipped with duals, could they not?

A. That I couldn't say. I don't know whether they could [172] or couldn't.

Q. In other words, you couldn't be sure they were the bus tracks?

A. We could tell as nearly, we could tell they were the tracks made by the bus and from talking

(Testimony of John S. Nicola.)

with people afterwards who stated they were on the shoulder of the road.

Q. You apply part of your testimony then to what you got from other people?

A. Well naturally, to try to support the position of the bus.

Q. Well now, those tracks extended over on to the shoulder of the highway, did they not?

A. They were pretty well out, yes.

Q. And had they gone straight forward they would not have gone across the bridge without some turn, would they, to the left?

A. No, wouldn't say that. I think they would have went on through there all right. They weren't hanging on the edge of the shoulder.

Q. I know, but they were out on that two foot shoulder, weren't they?

A. I wouldn't say exactly taking up the two foot shoulder. They might have one tire on the pavement and one on the gravel.

Q. That would be about a foot on the shoulder and a foot on the pavement?

A. I don't know exactly. [173]

Q. You won't place them for certain?

A. No, you can't place the shoulder of the highway down to inches, Mr. Goppert. You can't do that too exactly because there is variation.

Q. Well, they would have gone across the bridge if they went straight forward to the bridge, giving the right banister a close shave, wouldn't they?

A. It might be pretty close, yes.



(Testimony of John S. Nicola.)

Q. Now going to the north side of the bridge, did you make an examination, and if so what did it consist of of skid marks north of that bridge?

A. We tracked them back from the vehicles.

Q. Now let's get it down to what you did?

A. Well, yes.

Q. Not what somebody told you?

A. Nobody told me this now.

Q. Now how far north did you go?

A. I am confining, testifying to what I saw.

Q. What?

A. I am testifying to what I saw of it personally.

Q. How far north did you go?

A. I think as near as I can recall about up where that drainage ditch is and so-called hump in the road.

Q. Isn't it a fact you never went north of the north edge of the Lamb driveway? [174]

A. No, that is not a fact. We walked all around up there, Mr. Goppert; all around over that highway. I wouldn't say how far up there we did walk. We might have gone up there two or three hundred yards or maybe two hundred feet.

Q. Now you have testified in regard to that matter before?

A. I think I was asked about it.

Q. And asked specifically concerning how far you made that examination? A. Yes.

Q. And I want to read this to you and let you read it yourself from page 11 of this deposition: Going back to the afternoon of the 27th of Decem-

(Testimony of John S. Nicola.)

ber, 1946, did you observe the highway on the north side of the bridge?      Answer: Yes, sir.

A. Yes.

Q. Mr. Nicola, will you say whether or not you found upon that highway any skid marks which went from the west side to the east side of the road?

A. Yes.

Q. Your answer: Yes, sir, there was what appeared to be skid marks.

Q. You so testified, didn't you?      A. Yes.

Q. Could you describe or will you describe them, please? And here is your answer, I believe: Well, the best I can, yes. There appeared to be skid marks, two lines of them of course, starting on a slight curve and curving over to the east side of the highway and then just along the shoulder where there was only one left. [175]

A. That is right.

Q. One had run out and they were traced up to the trailer of the truck which was there.

Q. Did you so testify at that time?

A. Yes. One of them had run out into the barrow pit off the highway.

Q. And they were traced up to this trailer of the truck which was there. Did you so testify at that time?      A. Yes.

Q. Those tracks did go to the trailer or truck, did they?

A. They went to the truck and trailer both.

Q. Read this again.

(Testimony of John S. Nicola.)

A. This is the rear set of tracks I am talking about now.

Q. These tracks that I refer to now were traced up to the trailer. There was also tracks traced up to the rear end of the truck.

Q. Did you so testify at that time?

A. No, I referred to the tracks of the trailer, two sets of tracks.

Q. Now let's follow on through what you did testify at that time: The trailer of the truck that you refer to was that the trailer that was attached to the West Coast Special that was on the highway at the time of the accident? Your answer was: Yes, sir.

Q. Is that correct?                      A. Yes. [176]

Q. On which side of the highway was this West Coast Special truck and trailer when you arrived?

A. On the east side.

Q. Did you so testify?                      A. Yes.

Q. You remember testifying very well, I mean very clearly that you did testify in regard to all this matter at that time, don't you?

A. To the best of my recollection I gave what I thought was the proper answer.

Q. And directing your attention to questions and answers on page 12: Q. And what have you to say as to whether or not the highway to the north of the bridge had snow or ice upon it? Answer: It did.

A. Yes.

Q. And for a distance of 150 to 200 yards was

(Testimony of John S. Nicola.)

that a fact? Answer: In various places, yes. It was not solid snow.

A. Yes, that is right.

Q. You so testified at that time?

A. It was partly covered with snow, yes. There were places where the traffic whipped it off.

Q. And you remember being cross-examined in regard to that same matter on page 13 of that deposition, do you not? I want to read this to you and ask you if you so testified at that time in response to these questions: [177]

Question: On your way out you observed a very slippery condition of Highway 20?

Answer: Yes, it was snowy and slippery.

Question: There was ice on top of the road and snow on top of that?

Answer: Yes, from all appearances that was what it was.

Question: That covered the entire roadway south of the accident, did it not?

Answer: That is my recollection.

Question: It was a solid covering on the highway?

Answer: It was not solid, there were stretches where it was off.

Question: 500 feet from the scene of the accident it was solid coating of ice and snow?

Answer: As I recall it, it was pretty solid.

Q. That is, we were talking about the south and then we go on page 14 to the north? A. Yes.

(Testimony of John S. Nicola.)

Q. You so testified in regard to that part, the part that I have already read, did you not?

A. Yes.

Q. Then you were asked this question:

Question: And then did you make an inspection of the highway north of the scene of the [178] accident?

Q. And didn't you answer: Just for a short distance.

A. That is right, referring to where we went to look for the tracks.

Q. All right, we will just see how far you went in the next question:

Question: Did you make that far enough north to find that there was no snow on the highway from a point 300 feet north of the scene of that accident?

Answer: No, I didn't go that far, I had no occasion to.

Q. Did you so testify at that time?

A. I was estimating the distance I went. There had been no measurements made at that time. So far as I remember it could have been 200 feet or 300 feet or up to that hump.

Q. I am going to ask you some more about this:

Question: Didn't you have occasion to observe that the highway was clear north of the spot?

Answer: No, I didn't make any trip down there at all.

Q. Is that true?           A. That is right.

The Court: Just answer it. Did you testify that



(Testimony of John S. Nicola.)

way? And then you can explain it on examination of your own counsel.

A. Yes, I did at that time.

Q. And then you were asked on page 15 this question: [179]

Question: I believe you stated you did observe tracks that approached the scene of this accident from the north that you followed up to the rear end of the trailer that was being pulled by this tractor?

A. Yes.

Q. Did you answer:

Answer: Yes, there were some skid marks angling across the road.

A. Yes.

Q. And then you were asked the question:

Question: Isn't it a fact that there were 57 paces approximately 57 yards long?

Q. And didn't you answer:

Answer: I believe the Highway Patrolman said around 150 feet as near as he could tell.

Q. Did you so testify at that time?

A. Yes.

Q. Now that Highway Patrolman was who?

A. I don't remember who.

Q. It was either Keith Ward or Mr. Wickam?

A. It was either one or the other.

Q. And Wickam got there last?

A. Yes, Wickam was there last.

Question: You didn't measure them yourself?

Answer: No, I didn't measure them. [180]

A. That is right, I didn't measure them.

(Testimony of John S. Nicola.)

Q. And then you were asked this question at that time:

Question: You made no investigation of the road over a distance of approximately 200 feet north of the scene of this accident?

Q. And didn't you answer:

Answer: No, I had no occasion to do anything else.

A. I think that was my answer to your question at the time as I understood it, yes.

Q. Now isn't it a fact, Mr. Nicola, that you didn't choose to investigate to exceed 200 to 300 feet north of the scene of that accident?

A. As I tell you we investigated up to as far as we could trace where the truck started to get into trouble; whatever distance that was I do not know because we didn't measure it.

Q. Now isn't it a fact you only walked to the track that went across the road and you said it was approximately 150 feet long as given you by the highway patronman?      A. That is right.

Q. And that is the only track you followed?

A. That is the only skid mark.

Q. On the north side?

A. That is all we were doing was investigating skid marks, yes. [181]

Q. And now you testified yesterday you saw some wobbles in the track you investigated, was it in that 150 feet?

A. Well, it must have been.

(Testimony of John S. Nicola.)

Q. In other words, there was wobble in the track that went across the highway?

A. Yes, it was all a continuous wobble and a skid.

Q. A continuous wobble in the skid?

A. Yes. They were all connected together naturally.

Q. Will you tell me what kind of looking thing that track was?

A. No, I couldn't tell you that.

Q. You couldn't? You had some pictures taken out there, didn't you?

A. Yes, I asked the boy to take some.

Q. Will you present the ones that show the tracks?

A. No, they didn't show. He had his camera in very poor focus and they didn't show.

Q. Handing you this picture which you will observe has some track marks on it and their position, and observing the truck and the bus with some people standing around the back of the bus, does that refresh your memory as to the tracks you saw there that day?

A. Well, that looks very much like them, yes.

Mr. Goppert: We would ask that this be marked as Defendant's Exhibit No. 5. [182]

Q. Handing you Defendant's Exhibit No. 5, that is the picture, is it not, that you said showed the tracks that looked very much like you saw right after the accident?

A. As I recall.

Q. Now on the right-hand side you observe the

(Testimony of John S. Nicola.)

driveway that goes into the ranch house on the west side of the road north of the bridge? You observe that?      A. Yes, I think that is.

Q. Which you recognize those tracks the curve started north of that driveway?

A. As I recall it they did.

Q. The fact is didn't they start approximately at the west end of the Lamb driveway?

A. I believe it was in that neighborhood. I can't tell you definitely.

Q. You didn't mark it by any natural object?

A. No. We tried to pick out where the skid marks started and wanting to take a good mark that was in a skid.

Q. Don't you remember they started approximately where there was a clump of trees on the west side of the road right there by the Lamb driveway; that is where the thing started swerving across the road?

A. That could be approximately right. I don't remember so many trees on that.

Q. This is a pretty good picture of it, it shows the [183] truck and bus afire there, doesn't it?

A. Yes.

Q. You can see the fire on the wheels, the tires rather?

A. I would like to know at what distance he was from that. That would be quite a ways.

Q. That would probably be 200 or 300 feet from the scene of the accident, wouldn't it? I believe, Mr.

(Testimony of John S. Nicola.)

Nicola, that it was approximately 200 feet from the accident north right on the road.

A. Well, if it was we were considerably north of that looking for tracks if this is 200 or 300 feet.

Q. Handing you Defendant's Exhibit No. 6, now that is colored and that is off of the kodachrome film, and that gives exactly the same picture as this No. 5 you recognized as such, you recognize it as such, do you not?

A. It appears to be the same picture.

Q. And it shows also the same marks going across the roadway from the west to the east?

A. Yes.

Q. And shows two different ones almost parallel, does it not? I mean running about the same distance from each other clear across?

A. It is going across at an angle, yes. It went into the barrow pit closer to the bridge than I thought.

Q. Now then, Mr. Nicola, you remember seeing those two tracks that angled across from the west side of that roadway [184] to the east side, do you not? A. Yes.

Q. And they were approximately the same distance apart all the way, weren't they?

A. My recollection of it was there was two skid marks there with a big curve in it.

Q. Yes, that had a big wide curve in it, didn't it? No short, sharp curve?

A. I can't describe just what it appeared to be,



(Testimony of John S. Nicola.)

but it appeared to me one of those had a big curve in it.

Q. Isn't this a good picture of them?

A. It is not too clear. It is not what I call a good photograph at all. It is not sharp; however, it is a fair picture.

Q. You couldn't describe any better curves than that shows on those pictures 5 and 6?

A. Down here, if I recall it right, right here is where the wider hook in this curve, this skid.

Q. You are pointing there right to the, near the rear end of the tandems, that is, the rear end of the truck?

A. That is what I mean, the dual tandems.

Q. Now isn't it a fact those two tracks are the ones you traced up, as you testified down at Worland, to the rear end of the trailer?

A. Well, those are the tracks, that is right, but if I said the trailer, I meant the rear end of the truck. [185]

Q. You think that should be corrected to show the rear end of the truck?

A. Absolutely. I probably got confused with the question. Not the trailer because they don't make that kind of track.

Q. You were asked down there two or three times whether or not it was the trailer and you testified it was the trailer?

A. This mark appears in this picture appears very plain as being the drive wheels of the truck

(Testimony of John S. Nicola.)

and those are the two skid marks I am referring to. If I said the trailer——

Q. Now then there were no other skid marks on the north of this scene of the accident other than those two, were there, that you observed that afternoon?

A. I don't recall anything more than that.

Q. These two?

A. Just those two that appear to be skids.

Mr. Goppert: We want to offer in evidence Defendant's Exhibits Nos. 5 and 6, respectively, and ask that they be received as 5 and 6.

Mr. Lush: No objection.

The Court: They may be received in evidence.

(Whereupon, said Defendant's Exhibits Nos. 5 and 6, being photographs of the scene of the accident, offered and received in evidence, are a part of this record.)

Q. There was no other separate set of skid marks going across that road that you could observe anywhere on the north [186] side of the scene of the accident? A. I don't recall any but those.

Q. You remember, do you not, reading your deposition at Worland after it was given?

A. I think I did.

Q. And you read that in the office of E. M. Conant, the County Clerk there, did you not?

A. I don't remember whose office.

Q. And these statements which I read to you were read by you at that time, were they not?

A. I think that is correct.

(Testimony of John S. Nicola.)

Q. And the deposition you gave it bears your signature, doesn't it?

A. Yes. I should have read it more carefully.

Q. You think you should? A. Yes.

Q. And you swore to it before them at that time?

A. To the best of my belief is what I signed, yes.

Q. I see here Mr. Conant says you signed this up after it had been submitted to the witness and was read by him; he put that in there in his own handwriting, didn't he?

A. I don't know whose handwriting it is.

Q. Isn't that Mr. Conant's?

A. I don't know.

Q. Well, he certifies to it?

A. I don't know whose handwriting that is. I know Mr. Conant's signature and that is all. [187]

Q. Did you ask anyone else to check up on those tracks?

A. I seem to recall asking somebody to come with me to look at those tracks.

Q. Who was it?

A. I seem to recall to say to somebody, "Let's go and look at those skid marks."

Q. That was an officer, was it not?

A. I believe it was. There could be two or three people there; frankly I don't remember.

Q. It could have been Mr. Ward, couldn't it?

A. It could have been he or Mr. Wickam or anyone of them.

Q. Did you ask Mr. Martin Lamb to go measure the tracks and check up on them?

(Testimony of John S. Nicola.)

A. I seem to remember asking somebody, but frankly I don't remember.

Q. You are not trying to testify here as to what his report was to you, are you, from his investigation?

A. No, sir. I testified to what I saw and what it appeared to me to be the best of my recollection.

Q. And that is what you were testifying to in December, 1947, were you not?

A. I testified to what I thought was the proper answers to the questions as I understood them.

Q. And when you were asked the question about how far north you went you said 200 to 300 [188] feet?

A. I estimated the distance, but now I find it was possibly farther.

Q. And you couldn't tell about any track back north of that 150 foot track?      A. Personally.

Q. And is your memory better now than then?

A. I don't know. I don't think so.

Q. You think you were better then than now?

A. I don't know.

Q. Isn't it a fact that you were so busy taking care of the injured and taking bodies out and so on that you didn't take much time to check up on anything?

A. We took a short amount of time after we got organized. I will admit it was short. We done the best we could.

Q. And you didn't do the checkup until you had the people taken care of?      A. Yes.

(Testimony of John S. Nicola.)

Q. You checked up before that?

A. We checked up roughly before that and went and rechecked again after we determined we couldn't get in the bus.

Q. Isn't it a fact vehicles were being shunted around the scene of the accident through that driveway?

A. Yes. They were very light vehicles.

Q. Was there a bakery truck came skidding down there into the scene of the accident?

A. I have no recollection of that. [189]

Q. You don't remember that?

A. No, I do not.

The Court: We will take a recess until 2:00.  
(12.05 p.m.)

Court resumed pursuant to recess at 2:00 o'clock p.m. on May 17, 1949, at which time all counsel and plaintiff were present.

Mr. Lush: The plaintiff calls John Nicola for redirect.

#### Redirect Examination

By Mr. Lush:

Q. Mr. Nicola, you testified on cross-examination I believe that you drove about 50 miles an hour as a maximum speed coming from Worland to the scene of the accident?

A. Part of the time, yes.

Q. And I believe you testified that you skidded some in so doing, is that right?

A. Yes, two or three times.



(Testimony of John S. Nicola.)

Q. And what did you do to take yourself out of the skid when you started to skid?

A. Well, I just went with it.

Q. What do you mean you went with it?

A. Well, went with the direction I was [190] skidding.

Q. What?

A. Just go with the direction I was skidding and apply a little more power.

Q. And how did you go in the direction you were skidding, you mean you turned your wheels in that direction?

A. Your front wheels, yes.

Q. Turn your front wheels in that direction?

A. Yes.

Q. Did you have any trouble taking yourself out of skids doing that?

A. No.

Q. And you didn't go out of control at any time?

A. No, I did not.

Q. Did you apply your brakes at any time you were skidding?

A. No.

Q. Why not?

A. Well, it's too slippery. I was afraid to, I presume.

Q. If you did apply your brakes do you know what would happen when you were in a skid?

A. I think I would have probably went any direction then, I don't know.

Q. Would you lose control of your vehicle under those circumstances?

A. You would be very apt to.

Q. From your experience as a peace officer and

(Testimony of John S. Nicola.)

from the examinations you have made of the scenes of accidents, from your knowledge of the road conditions going north out of [191] Worland on that particular day and from all the particular information you have received with reference to the conditions that existed on that date, do you have an opinion as to what would be a safe speed driving north out of Worland?

A. Well, I would say not over 40 miles an hour.

Q. And when you say 40 miles an hour, to what type vehicle do you refer?

A. Well, I would say most any type.

Q. Now I believe you testified on cross-examination of the skid marks of the tractor; you had examined the skid marks of the tractor after it passed Martin Lamb's driveway?

A. Yes, we examined them.

Q. And if I remember correctly you said it appeared that those wheels were not revolving at the time that those skid marks were made?

A. That is the opinion that I formed, yes, sir.

Q. And that opinion was based on your examination of those marks, was it?           A. Yes, sir.

Q. Now I believe you testified extensively about one set of tire tracks that were made by the, that you believed were made by the dual wheels of the bus that ran from about Sam Piel's driveway to a point south of the bridge?           A. Yes, sir.

Q. Were you able to identify the corresponding tracks of that bus out on the road? [192]

A. In this way: there would be a few feet of

(Testimony of John S. Nicola.)

another pair of duals visible and then there would be a few feet where it wouldn't be visible, and then again there would be a few feet part of them were clomped out.

Q. And from your examination of the marks, the tracing of the marks such as were visible did you reach any conclusion as to whether or not the brakes were ever locked on Brownell's vehicle?

Mr. Goppert: That is objected to as calling for a conclusion of the witness, if the court please.

The Court: Well, I don't know; if he has some reason to give why he thinks the brakes were locked or were not locked, let him give them. Question him in regard to it and see what his knowledge is and see whether from his knowledge concerning such things he can make that deduction.

Q. (By Mr. Lush): Sheriff, what was the nature of the marks that you observed out in the road, that is, the corresponding set of duals in the road where you could see them?

A. Well, they were on more packed snow being farther to the left; they were on snow that was partly packed and they appeared to be rolling.

Q. Did they cut through to the blacktop at any place that you observed?

A. I don't recall that they ever cut through, no. [193]

Q. Did you observe anything else that would indicate to you whether or not the wheels on Brownell's vehicle were locked at any time?

(Testimony of John S. Nicola.)

A. How was that again?

Q. Did you observe anything else about the marks that would tell you whether or not the wheels of Brownell's vehicle were locked at any time?

A. Well, from what I could observe they didn't appear to be, no.

The Court: Well, now you see he hasn't given any reasons for the exposition of those opinions; that is, there isn't proper foundation laid there for him to say whether the wheels are locked or were not locked.

Mr. Goppert: If the court please, I want to move the answer be stricken as a mere conclusion.

The Court: Yes, I will grant the motion.

Q. (By Mr. Lush): Now, Mr. Nicola, on cross-examination I believe your estimates of the distances were challenged, is that correct?

A. I presume. Yes, I think so.

Q. Now assuming that the distance between the middle of the drainage ditch and the Martin Lamb driveway is approximately, is exactly 250 feet, how far north of the scene of the accident would you say that you walked in the examination of tracks? [194]

A. To the best of my recollection it is up near what is now marked as lateral or hump in the road there.

Q. Up that far?

A. Well, wherever that is.

Q. This point. And if it is 425 feet from the bridge to the lateral, would you tell us then by that you walked approximately 425 feet?

(Testimony of John S. Nicola.)

A. Well, as I said before I was estimating before and it must have been that far; to the best of my recollection we were up on that hump so-called which lies in the road. I done a poor job of estimating, apparently.

Q. And when you had walked that far north you did look on down the road; did you not look north down the road?

A. Yes, we were looking here along on the sides north and south.

Q. And you observed no substantial difference in the road north of the scene of the accident, or rather north of the lateral, irrigation lateral and south of the lateral with reference to ice and snow?

A. The ice I couldn't say about. As I recall it there was considerable snow on the road. The ice would be underneath and, of course, we didn't dig down underneath.

Mr. Lush: That is all. [195]

#### Recross-Examination

By Mr. Goppert:

Q. You couldn't see the ice under the snow until you got the snow kicked off of it, could you?

A. No, you couldn't have seen any ice, not from the top.

Q. Now then you backed up a little on me. I thought you were correct this morning when you testified, or maybe it was last evening, that those wheels were sliding, the bus wheels, where I am



(Testimony of John S. Nicola.)

calling your attention to the testimony you gave at Worland in December of 1947. You did say at that time, as I understand you corrected your testimony from what it says here. This says—you answered then when I was asking you what caused the marks, you said the wheels were sliding and you said you should have said they appeared to be sliding?

A. That is what it should have been if I have my best recollection.

Q. Whether it was one or the other there was evidence that convinced you that the wheels appeared to be sliding?

A. Now just a minute. On this soft snow they had that appearance. The left of the bus what little we determined——

Q. The left?

A. Yes, it would be the left-hand side.

Q. The right-hand side is the one you are talking about?

A. I know that. I said that was in loose snow and it [196] picked it up, plowed it out along there, and I thought my answer should have been on it was that they appeared to have been sliding.

Q. Well, you were asked the question this way: There were the skid marks and wide marks of a wheel? Your answer: The wheels were sliding.

A. I think I should have or meant they appeared to have been sliding; I still think that is the answer I made.

Q. Well, whether they appeared to be sliding or

(Testimony of John S. Nicola.)

were sliding it still was only what you saw on the ground that got you that opinion, wasn't it?

A. Absolutely nothing else to go by.

Q. Now then I think I understood your testimony this morning that the only tracks, the only skid marks on the north side of the road that you saw are these that are depicted on Defendant's Exhibit 5, two of them parallel angling to the southeast?

A. Yes, that would be southeast.

Q. There wasn't a third track between them?

A. Not to my recollection.

Q. There was just those two and they were approximately the width?

A. Big wide marks.

Q. Each one of them was a pretty wide mark, wasn't it?

A. Yes, they were. [197]

Q. And they ran approximately parallel and there was nothing, there was no third mark out there beside of them anywhere, was there?

A. I don't recall any excepting just a big wide——

Q. And they were approximately the width apart of two sets of wheels on a truck or a trailer?

A. To the best I remember, yes.

Q. And those appeared to be sliding?

A. Yes.

Q. And side swerve sliding, wasn't it, not rolling forward?

A. Yes, they were going sideways across the road, the track.

Q. And you do remember you testified at Wor-

(Testimony of John S. Nicola.)

land that they were the trailer tracks, that you traced them to the trailer wheels?

A. There was a track to the trailer wheels.

Q. You testified at Worland you traced these tracks that went across the road to the trailer wheels?      A. That is right.

Mr. Goppert: That is all.

The Court: Any further examination of this witness?

### Re-redirect Examination [198]

By Mr. Lush:

Q. Was that a correct statement that you made in your deposition that you traced those to the trailer?

A. The trailer wheel had made a track.

Q. The trailer wheel had made a track?

A. Yes.

Q. And had the tractor wheel made a track?

A. Yes.

Mr. Lush: That is all.

### RONALD E. WHISTON

was called as a witness for plaintiff, and having been first duly sworn, testified as follows:

### Direct Examination

By Mr. Lush:

Q. Will you state your full name, please?

A. Ronald E. Whiston.

Q. Where do you live, Mr. Whiston?

(Testimony of Ronald E. Whiston.)

A. 866 North 12th Street, Laramie, Wyoming.

Q. What is your occupation?

A. I am an engineer.

Q. And calling your attention to the date of December 27th, 1946, I will ask you were you a passenger on a bus that was involved in an accident on that date?      A. I was.

Q. And did that accident occur about 9 miles north of Worland, Wyoming?      A. Yes.

Q. Where were you seated in the bus before the accident? [199]

A. My wife and I were seated in the first seat behind the loading door. That is on the right-hand side of the bus.

Q. Were you next to the window or was she?

A. No, she was.

Q. And you were next to the aisle?

A. That is right.

Q. And during the course—where did you get on the bus?

A. Well, I eventually went out the door.

Q. Where did you get on?      A. At Casper.

Q. At Casper, and after the bus had passed Worland did you have an opportunity to observe any of the instruments on the dashboard from time to time?      A. Yes, I did.

Q. And what instruments were you able to observe?

A. Well, I realized that the roads were slick and my wife was a little nervous and I made a special effort to look at the speedometer now and then.

(Testimony of Ronald E. Whiston.)

Q. And what speed or what speed was shown by the speedometer when you observed it coming north of Worland?

A. Well, about the time I looked at it he was between 30 and 35 miles an hour.

Q. Did you ever observe by any means other than the speedometer that the bus was going faster than 35 miles an hour?      A. No, I didn't.

Q. Now just before the accident occurred there was an [200] application of the brakes of the bus, was there not?

A. Well, I couldn't really say whether or not there was application of the brakes or not; all I knew the bus was slowing down, but whether he was using compression or brakes I couldn't tell.

Q. And did you observe the speedometer at the time you first noticed that slowing down action?

A. Well, sort of; yes, I did.

Q. And do you remember what the speedometer reading was about that time?

A. Well, it seemed to me just shortly before the impact the speedometer reading was around 20.

Q. And when the bus first started to slow down back from the point of impact did you notice what the speedometer reading was then?

A. Well, when I first noticed the slowing down of the bus he was going about 30.

Q. Did you notice whether or not the bus skidded as it was slowing down?

A. As far as I could tell the bus never skidded at all.



(Testimony of Ronald E. Whiston.)

Q. Did it deviate from a straight line?

A. Well, I was under the impression at one time he might have started to turn to his left, but whether it deviated from a straight line or not I don't know.

Q. And just before the impact was there any deviation [201] from a straight line?

A. Yes, the driver tried to turn the bus shortly to his right.

Q. And you observed him do that?

A. Yes.

Q. And did he take any other action prior to that?

A. Just prior to the impact he opened the door.

Q. Now did you observe the movements of the vehicle that was approaching from the opposite direction?

A. Yes, I did.

Q. Are you now familiar with the scene and landmarks of the accident?

A. A little more so than I was at the time.

Q. Calling your attention to Defendant's Exhibit No. 5, this roadway shown on the right has been identified as the driveway leading into the ranch on the west side of the road; do the tracks shown there give a fair representation of your recollection of the path of the oncoming vehicle from that point down to the point of impact?

A. Yes, it looks similar to what I would think the vehicle would have made.

Q. And did you observe the movement of the vehicle before it reached, this oncoming vehicle before it reached that point?

A. Yes, I did.

(Testimony of Ronald E. Whiston.)

Q. And what was the movement of the oncoming vehicle?

A. Well, when I first noticed it I didn't pay particular [202] attention to it. He was traveling in a straight line on his own side of the road; however, I started paying more attention to it when he made a swerve or a skid it appeared to me to be coming over on the bus's side of the road, and from then on I watched him very closely.

Q. Did he appear to straighten up after that first skid?

A. After the first swerve he got over on what appeared to me to his own side of the road and went in a comparatively straight course for a short ways.

Q. And did he swerve then again before the first skid indicated.

A. Yes, he swerved a second time even more so than the first time.

Q. And were those swerves to the right or left, to his right or left of the oncoming vehicle?

A. To the oncoming vehicle's left.

Q. Then would the picture, this photograph give a fair representation of the path of the third swerve that the vehicle made?

A. Yes, I believe so.

Q. Can you place the position of the bus when you first noticed that it was slowing down by any of the landmarks?

A. No, I can't. I didn't look out at any time to know just exactly where the bus was.

Q. Can you place the position of the truck com-

(Testimony of Ronald E. Whiston.)

ing from the north by any of the landmarks [203]  
north?

A. Yes, it was just about crossing the irrigation lateral.

Q. Did you walk around the scene of the accident after it was over? A. No, I didn't.

Q. Do you know what the road condition was coming north from Worland?

A. Well what little I did walk around I walked from the bridge south to the car which took me into Worland. The road was very icy.

Q. Now you testified, you gave testimony in a case involving this same accident, did you not?

A. No, I have only given a deposition.

Q. In that deposition you made certain estimates of distances and so on and so forth?

A. Yes, I did.

Q. And those were purely estimates of distances, were they not? A. Yes.

Q. Do you remember how far apart you said these vehicles were when you started to skid, when the truck started to skid?

A. I believe I said something about 300 yards. I am not sure. I would have to look at it again.

Q. Now assuming that the distance between the north end of the bridge and the irrigation lateral is about 425 feet, could you now estimate just about how far apart the vehicles were?

A. It would be 200 or 250 yards probably then.

Q. So you put it at 750 feet, is that right?

A. Yes. [204]

(Testimony of Ronald E. Whiston.)

A. And if the truck was 425 feet north of the bridge at the time it started to swerve, then your best estimate now would be that the bus must have been less than 350 and probably not less than 200 feet short of the bridge?

Mr. Jameson: We object to that as leading question, if the court please.

Mr. Lush: It is a mathematical computation from what he said is what it is. I will withdraw the question, your Honor. That is all.

Cross-Examination

By Mr. Jameson:

Q. Mr. Whiston, as I understand it you and your wife got on the bus at Casper?

A. That is right.

Q. And what time was that, if you recall?

A. About 9:00 o'clock in the morning.

Q. And up to Worland did you travel about on schedule, do you recall?

A. I don't recall. I believe we were a little late in Worland.

Q. How late in Worland?

A. I couldn't say.

Q. What was the condition of the highway south of Worland?

A. As I remember it a few miles south of Worland it was [205] spotty ice, up to that point the road appeared to be good.

Q. And where did the ice start, what distance south of Worland?

(Testimony of Ronald E. Whiston.)

A. It was spotty all the way into Worland.

Q. From what point.

A. I couldn't give any definite distance; it must have been two or three miles.

Q. But beyond that the highway was clear, was it clear of ice?      A. Yes.

Q. And then between Worland and the scene of the accident it was pretty solid ice, was it?

A. Yes, it was.

Q. I believe you mentioned that you had looked at the speedometer on one occasion?      A. Yes.

Q. Was that between Worland and——

A. Well it was all the way from Casper.

Q. How many times do you suppose you looked at the speedometer?

A. I couldn't give you any idea. I haven't any recollection.

Q. And between Worland and the scene of the accident did you look at the speedometer a number of times?

A. Yes, as I remember it it would be probably three or four times.

Q. That is in a distance of 9 miles?

A. Yes. [206]

Q. Why did you do that?

A. Well my wife was a little nervous and so was I and I just wanted to check and see what the speed was.

Q. What caused you and your wife to be nervous?



(Testimony of Ronald E. Whiston.)

A. The fact that the roads were icy and we were in sort of a rush to get to our destination.

Q. Now you last looked at the speedometer at what point?

A. Well as I was looking at the truck I was looking at the speedometer at the same time, and I couldn't give you any.

Q. Do you recall on that point, Mr. Whiston, testifying in your deposition taken in October, 1947?

A. I don't recall exactly what I said without reading it.

Q. Calling your attention to the deposition, page 7, were you asked this question? You glanced at the speedometer? And did you answer: I did?

A. I did.

Q. And then were you asked this question: And was it less than 30 miles per hour? And did you answer: The last time I looked it was 30 miles, which was just before the bus got to the bridge I would say?

A. Yes, I did.

Q. Is that correct?

A. As far as I could tell, yes.

Q. So just before you got to the bridge it is your best estimate you were traveling 30 miles an [207] hour?

A. I never knew the bridge was there but I imagined it was just then.

Q. Pardon?

A. I never really noticed the bridge so that was just about as good an answer as I could make. I

(Testimony of Ronald E. Whiston.)

don't know whether we were close to the bridge or far.

Q. Now, Mr. Whiston, when you first observed the truck coming from the north at what point was the bus? A. I don't know exactly.

Q. Would you say it was about equi-distant from the bridge?

A. That was my impression at the time.

Q. Your impression at the time was that the truck and the bus were equi-distant from the bridge?

A. Well as I said I didn't know exactly where the bridge was at that time but that was my impression later.

Q. And did you think they were going to pass on the bridge? A. No.

Q. You did state, did you not, in your deposition that you estimated they were both about the same distance from the bridge? A. I did.

Q. And both of the vehicles were traveling then about the same rate of speed?

A. It appeared to me they were.

Q. Now I believe you testified on direct examination, [208] Mr. Whiston, that it was your impression that the bus pulled to the left at some point after you first observed the truck?

A. It was my impression when the truck made its second swerve across the road it looked like it was over on the bus's side of the road and that the bus did start to pull to his left in order to miss him.

Q. And at what point was that with reference to the bridge?

(Testimony of Ronald E. Whiston.)

A. I don't recall right now. It was completely south of the bridge.

Q. Would you say between 30 and 50 yards?

A. Well I really couldn't say. I can't recall just exactly where it would be.

Q. You did make that estimate, did you not, in your deposition? A. I did at one time, yes.

Q. And of course do you recall now whether the bus went over to the west side of the highway at any point? A. No, I don't believe he did.

Q. Now do you recall testifying on that point at the taking of your deposition? A. Yes, I do.

Q. Calling your attention to page 7 of the deposition, Mr. Whiston, were you asked this question: You observed the bus in which you were riding, you observed the bus driver [209] swerved over into his left and over into the west lane at one time while you were approaching the bridge? And you answered: Yes, that was while the truck was in the bus's lane? A. Yes.

Q. Then you were asked this question: Did your bus get, actually get clear on the west side of the road for a part of that distance? And did you answer: I would say not entirely, no?

A. That is correct.

Q. The question: But it was partly over into the west or left hand lane? And your answer: Partly, yes.

A. Yes, that is correct. That is my impression.

Q. And then this question: And about what distance would you estimate that was from this bridge

(Testimony of Ronald E. Whiston.)

that this action took place? And your answer: Between 30 and 50 yards? A. Yes.

Q. Did you examine the tracks at any time after the accident? A. I did not.

Q. I believe you testified that you don't know whether or not the brakes were applied on the bus?

A. No, I didn't.

Q. Mr. Whiston, when you first observed this vehicle coming from the north could you tell what it was?

A. I could see it was a large tractor with semi-trailer behind it although I didn't observe exactly what trailer was. [210]

Q. You thought at the time it was a big tanker?

A. I did.

Q. And you described it as a large tanker in the statement after the accident, is that correct?

A. As far as I remember I did.

Q. And I believe you said you didn't pay any particular attention to the trailer?

A. I didn't see the trailer at all. I don't remember seeing what the trailer did. I knew it had a trailer on it.

Q. You didn't see what the trailer did at all?

A. No.

Q. The only thing you saw was the truck?

A. Yes.

Q. You didn't see what the trailer did as it approached the point of impact?

A. No, I didn't.

Q. Could you describe for us, Mr. Whiston, the

(Testimony of Ronald E. Whiston.)

course that the truck took when it went into the last, when it made these marks that you observed on this picture, Defendant's Exhibit 5?

A. Well after the truck came out of its second swerve it seemed to me to go back on its own side of the road, and then after the bus was practically on the bridge why it turned, the truck turned sideways and slid sideways down the road in front of the bus.

Q. It slid sideways? A. Yes.

Q. And were the wheels rolling? [211]

Q. You didn't pay any attention?

A. If I had paid attention to them, I may have seen them.

Mr. Jameson: That is all.

### Redirect Examination

By Mr. Lush:

Q. Mr. Whiston, as the bus approached the scene of the accident were you conscious of the fact that it had gone over on to the shoulder of the road?

A. No, I wasn't.

Q. And was there any center line visible on the road? A. No.

Q. Is it possible that your impression that the bus had gone across the center line of the road was completely erroneous in view of the fact that the bus was so far over to the right?

A. It is very possible, yes.

Mr. Lush: That is all.



(Testimony of Ronald E. Whiston.)

Q. (By the Court): Did the witness give an estimate of the distance the oncoming vehicle was the first time he observed it? Did you?

A. I believe in that deposition I gave 150 yards.

Q. 150 yards? A. I believe. I am not sure.

Q. Was that before the first swerve you testified to? [212]

A. Practically the same or shortly before.

Q. You observed it about the time of the first swerve, is that right? A. Yes.

### Recross-Examination

By Mr. Jameson:

Q. And at that time as I understand it, Mr. Whiston, the bus was about the same distance from the bridge as the truck was?

A. That was my impression.

Q. Whatever that distance may have been, 100 yards or 150 yards?

A. That is what I thought.

Q. The two were about equi-distant from the bridge?

A. I didn't see the bridge but that is my impression.

Q. And you so testified on your deposition?

A. Yes.

Mr. Jameson: That is all.

Mr. Lush: That is all.

MARTIN LAMB

was called as a witness for plaintiff, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lush:

Q. Will you state your full name, please? [213]

A. Martin Lamb.

Q. Where do you live, Mr. Lamb?

A. My address is Worland, Wyoming.

Q. And where do you live with reference to the town of Worland?

A. Now I live about 12 miles north.

Q. And where did you live with reference to the scene of the accident at the time of the accident?

A. In relationship you say with the scene of the accident?

Q. Yes.

A. Just immediately to the northeast.

Q. Is this place marked house at point "C" on the map a residence you lived in at that time?

A. Yes.

Q. And this driveway referred to as the Martin Lamb driveway, you are the Martin Lamb that lived at that place, is that correct?

A. Yes.

Q. Now on the date of the accident where were you at about the time the accident occurred, do you know?

A. Well I wouldn't have any time on it anyway.

Q. About 2:30 in the afternoon where were you?

A. Well I have an idea I was between Worland and home somewheres.

(Testimony of Martin Lamb.)

Q. You were on your way home? And do you know what time you arrived at the scene of the accident? A. No, I don't. [214]

Q. What is your best estimate of the time you arrived there?

A. Oh, I really have no—now I was in town at 2:00 when we started to get ready to come out and I stopped at a neighbor's house for a few minutes.

Q. And when you arrived at a point 9 miles north of Worland the accident had already happened?

A. That is right, it had happened anyway.

Q. You had seen evidence a few miles away that it had happened? A. That is right.

Q. What was the nature of that evidence?

A. Smoke.

Q. And how long had you lived in that place right near the scene of the accident?

A. From the spring of 1929 until the spring of 1940, then I moved back on the place the spring of 1945.

Q. And for about except for that five years you have lived there ever since 1929 up to the time of the accident? A. Yes.

Q. Are you familiar with the contours of the roads and ditches and land immediately adjoining the road at the scene of the accident?

A. Fairly well.

Q. And were you farming this section or this part of the land out here were you? A. Yes.

Q. What is the nature of the ditch or barrow pit

(Testimony of Martin Lamb.)

on the west side of the road and north of the scene of the accident? [215]

A. The ditch there is fairly wide and probably over 6 feet or better deep in relation to the roadbed; it wouldn't be that deep in relation to the original land. And there's quite a few trees in there, oh, 9 or 10, I have an idea.

Q. And what is the nature of the ditch on the west side of the road and south of the bridge?

A. Back at the beet dump approach and a little farther south than that it is probably the same depth, and from the approach north it would gradually get a little deeper. At the bridge it is probably 6 or 7 feet there in relation to the road.

Q. That is from this point north you say it gets deeper?

A. It gets a shade deeper as it goes along.

Q. And it is about the same depth as the ditch on the north side of the road?

A. Very near. In fact it is a little deeper than the ditch to the north at the bridge.

Q. Now what is the nature of the ditch located between the Martin Lamb driveway, to which we have so frequently referred, and the county road here?

A. That would not be over 2 or 3 feet probably, around somewheres between the two, and it is considerably narrower; I would say across the top it was probably 12 feet.

Q. What is the situation with reference to obstructions along the fence line between the county

(Testimony of Martin Lamb.)

road north of the [216] bridge and the Martin Lamb driveway at the time of the accident?

A. You mean visual obstructions?

Q. Physical obstructions?

A. Physical obstructions. Well it consists of solid posts setting at each end, in fact the posts consist of tops of the piling of that bridge, and in between there's steel posts, I believe every rod, and it's light gauge woven wire, it's fairly high, and single strand of barbed wire on top, probably 4 feet in height. of barbed wire on top, probably 4 feet in height.

Q. What is your estimate of the size of these steel posts that run there, are they tubular posts?

A. No, they are what they commonly call a "T" post.

Q. And what would you estimate would be the width of one of those posts?

A. Well they consist of what I would say probably was 3/16th strips, two of them fastened in the shape of a "T" with crimped edges.

Q. And what at the time of the accident do you know whether there were any obstructions along the fence line from the Sam Piel driveway to the same bridge?

A. Yes, Piel's always lined their farm machinery along there and within a road or two where the bridge is but in line with the bridge.

Q. And do you know whether or not that line of farm machinery was there at the time of the [217] accident?

A. The bulk of it was.

Q. And what was the nature of the farm machinery there, if you know?



(Testimony of Martin Lamb.)

A. Well it would be a general line. Now I don't recall just what all they would have had there. I don't believe any of their harrows was there, and the binder was there. It was lined solid. I think there was one tractor I know was there and there was another one that probably would have been there because they didn't run one of those in the winter, and otherwise it would be mostly plows, mowing machines, and so on.

Q. How long after the accident was it before you moved out to this place?

A. How long afterwards?

Q. Yes. A. I just moved this spring.

Q. From the time of the accident until this spring you have constantly lived in this place?

A. Yes.

Q. And for how many years immediately before the accident did you live there?

A. It would have been about eighteen months.

Q. Were you familiar with the nature of the roadway immediately north of the scene of the accident for five or six hundred feet and down to the bridge? A. Yes.

Q. And what is the nature of that roadway?

A. Oh, I would state it as good. It is as good a stretch as there was along that road and it had been protected a good [218] deal by the trees from freezing and thawing and the shoulders were in better shape and I don't recall any work being done on that road from that about until I moved.

(Testimony of Martin Lamb.)

Q. And is this one of the United States highways?      A. Yes, U. S. 20.

Q. During the time you lived there what did you observe with reference to the amount of travel there was on it?

A. Well I would say travel was fairly heavy there generally.

Q. And is there a difference between the amount of travel in summer and winter?

A. Yes, it would vary a good deal on tourist travel and also on the amount of truck traffic there would be on account of——

Q. Would the travel on that be properly described as heavy in winter?

A. Well I think so. You would describe it as moderately heavy. It is, after all, the main highway through this Big Horn Basin.

Q. When you arrived at the scene of the accident did you observe the bus there?      A. Yes.

Q. And where was this located on the road?

A. Well it was located when facing up east the rear end probably 6 feet from the western banister of the bridge. Now there is a culvert runs in through here and the door on the [219] bus was immediately over that culvert, and that culvert would run probably, oh, 8 or 10 feet from the banister from the eastern railing of the bridge. And it was, the front end would have been somewhat north of due east. Now, how much, I wouldn't know exactly, but it was enough so that I believe the rear end of the bus

(Testimony of Martin Lamb.)

would have extended maybe a few inches on to the bridge.

Q. And what was the general position of the tractor when you observed that?

A. Well it was a few points south of southwest. That was the tractor.

Q. It was pointing in what direction?

A. It was pointing in a southwesterly direction but the front end was a point or two south there.

Q. And where were the front wheels just with reference to the center line of the pavement?

A. I don't believe that the right hand front wheel would have reached to the center stripes of the highway.

Q. And was it the wheel that was farthest?

A. That would have been the closest wheel to the——

Q. And what was the general position of the trailer when you arrived there?

A. Well in order to—it would have been more north and south.

Q. It was at some angle to the tractor? [220]

A. It was not due north and south; it was at an angle to the tractor and was also headed a shade to the west.

Q. And where was the trailer with reference to the edge of the road?

A. The trailer was completely clear of the road.

Q. It was in the barrow pit?

A. Unless it would have been the front corner.

(Testimony of Martin Lamb.)

Q. And was it completely down in the barrow pit or was it on the shoulder or both?

A. Well I think you would find it was off the shoulder of the road. Now whether it would have reached to the bottom of the barrow pit or not, I don't recall; it was free of the road, however.

Q. Now did you observe the marks that were made by that tractor or trailer in the course of their movement across that road?

A. Well, yes, I followed two tracks.

Q. And calling your attention to Defendant's Exhibit No. 5, do those seem to be a fair representation of the tracks that you followed?

A. I would say they are a fair representation, yes.

Q. And do you know whether those tracks lead to the tractor or the trailer or both?

A. They are between them.

Q. Between them?

A. As I remember towards the rear end of the trailer but [221] they were between them.

Q. Now from looking at that exhibit can you tell, point out to the court how far north that exhibit shows on this Plaintiff's Exhibit No. 1?

A. It would show most of this approach right here.

Q. And that was the approach to the house across the road from yours? A. That is right.

Q. And it doesn't show all of that approach, however?

A. No, but from the angle the picture was taken

(Testimony of Martin Lamb.)

you would have to be standing approximately on the north side of it.

Mr. Lush: Did the court have a chance to look at that at all?

The Court: I looked at it before while you were examining the witnesses.

Q. Now will you describe the continuation of those tracks north from the place where they are shown in the exhibit?

A. They continued north over to about a point about a rod or possibly more, few feet more or less of this irrigation lateral.

Q. And on which side of the road did they appear to be, let us say the place where they appear on the Exhibit Defendant's Exhibit 5 and the place where you observed them to start?

A. They appeared on, I would say, the west side of the road. Now, of course, at that time you could not tell where [222] the center stripe on the road was.

Q. Generally on the westerly half of that road?

A. It was on that side of the road.

Q. Were they straight back in that area?

A. I don't know as you could classify them as straight; I would say they were in an orderly manner.

Q. They were what?

A. Orderly. Couldn't see any violent slippage sideways.

Q. Now how far north did you go in your attempt to follow those tracks?



(Testimony of Martin Lamb.)

A. Only to that point.

Q. Only to that point? A. Yes.

Q. And from that point could you see north of the road? A. Yes.

Q. And approximately how far north could you see?

A. It is possible to see half a mile of the road there.

Q. Did you observe the general snow covering of the road for half a mile north?

A. Well I wouldn't say that I could observe it and tell the snow covering a half mile of the road but I think you could see pretty well down there and it would consist of about a quarter of a mile from the bridge.

Q. Now from the point, farthest north point you walked on the road did you observe the road northward generally? A. Yes.

Q. Did you observe any difference between the appearance [223] of the snow covered on the road north of the irrigation lateral, shall we say, and south of the irrigation lateral? A. No.

Q. Did you have any occasion to go north that day other than straight up the road?

A. North? Well, yes, I did. I went out in the morning to the field.

Q. And where did you go in the field, can you point out on that map?

A. I run out of map too quick. It would be about  $\frac{3}{8}$ ths of a mile east and then it would have been,

(Testimony of Martin Lamb.)

it would have lacked about 200 yards of being the complete half mile to the north.

Q. And where were you walking then, across the fields?

A. If I remember correctly, I drove out.

Q. You drove out? A. Yes.

Q. You drove across the fields?

A. I drove across. It consisted of coming into this lane somewhat east of here of the bridge and up and over it to the half mile point, and somewhat west.

Q. Do I get the idea the trail you followed was about a mile east of this?

A. Half a mile up this lane, then you would turn half a mile not quite north, and then I would go somewhat west; it was lacking 200 yards of being half a mile north.

Q. And did you observe any difference between the snow [224] covering at the scene of this accident, at the scene of the accident and the snow covering at the northern most point that you reached that day?

A. No. No, in fact, the conditions generally were the same. What I had gone to was a hay grinder.

Q. A what?

A. A hay grinder and found that there was the same ice covering.

Q. There was the same ice covering on that?

A. Yes.

Mr. Lush: You may cross-examine.

(Testimony of Martin Lamb.)

Cross-Examination

By Mr. Haughey:

Q. Mr. Lamb, did someone send you to check up on the track marks?

A. I wouldn't say send necessarily. Mr. Nicola did make the remark when I walked up to him, and if he had I wouldn't say that was previously to his checking them or afterwards. I rather think it was after he had checked them.

Q. Did you see him check the marks?

A. No. I might have seen him when I was checking them but I didn't watch him check them. And Mr. Nicola told me at that time, he said: "Go look at the tracks."

Q. Did he point out any particular tracks for you to look [225] at?

A. No. He might have thought there was just something that would interest me.

Q. Did you see more than one set of tracks leading north from the point of the accident?

A. At the point I investigated them there had been another one, another dual tired truck in. I only followed two tracks back there, and really didn't pay a lot of attention to the other set of tracks because they were so much clearer. They were the only two plain tracks that were cut down.

Q. Did you say you don't know whether there were any other tracks leading up to the tractor and trailer than the one set you did trace down?

A. That is the only set I traced.

(Testimony of Martin Lamb.)

Q. Is that the only one you saw?

A. Those are the only ones I noticed. However, there could very easily have been others and me not notice them.

Q. Now, Mr. Lamb, handing you what has been marked Defendant's Exhibit 7, I will ask you whether that fairly shows the scene of the accident from the south facing north? A. It does.

Q. And is there marked on there a line in pen and ink with some initials above it?

A. That is correct.

Q. Do you know what that line is intended to depict? A. Yes. [226]

Q. Can you tell us what it is, please?

A. That is a line that I drew, however, the initials do not connect with that line, but it is a line that I drew, I believe, at the deposition taken at Worland.

Q. And does that line fairly indicate the direction of the skid marks you traced?

A. Yes, with the thought in view you don't always get the same distance this way on a picture that you do this other way.

Q. In other words, that is shortened so this ink line is a little sharper than it actually was, or considerably sharper than it actually was on the road itself? A. Yes.

Q. And is the building in the right hand side of the picture, is that your house? A. Yes.

Q. I would like to find out about this telephone

(Testimony of Martin Lamb.)

pole. We made some stipulation about the plat. Is that pole standing in the corner of your land?

A. Yes.

Q. Was it standing there on the day of the accident?

A. Yes. Now this picture is not the same as the day of the accident. This pole was not set in the same place now; it is set over in here.

Q. In other words, it sets closer to the road now than in that picture? A. Yes.

Q. But this is a fair representation on the day of the [227] accident? A. Yes.

Mr. Haughey: We will offer in evidence Defendant's Exhibit No. 7.

Mr. Lush: No objection. Let me look at that. I jumped at a conclusion there. You are offering it for nothing but the purpose of the tracks and these initials are meaningless and so on?

Mr. Haughey: Yes.

Mr. Lush: No objection.

The Court: It may be received in evidence.

Whereupon said Defendant's Exhibit No. 7, being a photograph of the scene of the accident, offered and received in evidence, is a part of this record.

Q. (By Mr. Haughey): Mr. Lamb, did you draw the mark on that Defendant's Exhibit 7, the picture I just showed to you, before you had seen



(Testimony of Martin Lamb.)

the pictures which are now marked Defendant's Exhibit 5, which I now show you?

A. That is correct. Or to my knowledge it was before. I don't think I have seen that other one before.

Q. Now with reference to the direction of the track marks on the highway starting first at the northerly point where you could first find them present on the highway, would you say that was about a rod north of the irrigation ditch?

A. That is right. As I remember it there is an approach [228] into this field right along side of this where it shows the trees. Your trees would be in the approach and it was right at the northern edge of that some 16 or 18 feet from the lateral there.

Q. You said irrigation ditch or lateral?

A. That is correct.

Q. That is marked "B" on the plat?

A. Yes.

Q. And the tracks you first saw then the farthest to the north you could see them was a rod north of that? A. Yes.

Q. 16 or 18 feet north of the irrigation ditch marked "B" thereon? A. Yes.

Q. And in what direction did they go from that point? A. Southerly direction.

Q. Until they came to about where on this map?

A. To the northern trees in this group.

Q. Is that northern tree directly opposite from the Martin Lamb driveway?

A. Pretty well as I remember it.

(Testimony of Martin Lamb.)

Q. The direction of the tracks the first point to the north and that tree opposite this driveway was generally southerly, you say?

A. Yes, on the west side of the road.

Q. Was it about parallel with the west side of the road?

A. I would say fairly parallel. [229]

Q. And was it in a fairly straight line?

A. Yes. There could have been, oh, a widening of the track but I can't recall of them making any violent swerves anywhere.

Q. And then from the point opposite the tree which you pointed out opposite this driveway where did the tracks lead?

A. They lead in a southeasterly manner.

Q. And was the direction of the tracks in a southeasterly direction fairly straight?

A. Well, yes. Now it was hard to tell there for a short ways; you want to remember that they had used this driveway.

Q. You mean the driveway opposite your house leading westward?

A. Yes, leading westward they routed travel through there and there had been some traffic through there before I went.

Q. I wonder if for identification you would mark that driveway you are speaking of as "D", with the letter "D"? The traffic after the accident then was routed from the north westward through the lane marked "D" on the plat?

A. Yes, with the exception of a few cars that

(Testimony of Martin Lamb.)

come by and I believe a few of them entered this same lane here.

Q. In other words, some cars came closer to the bridge and went westerly along the road which is closer to the bridge?

A. I don't know if they had at that time or [230] not.

Q. Do you recall testifying on a deposition in other cases arising out of this accident in Worland? A. I do.

Q. And showing you a copy of the deposition I will ask you to read it and I will read it too so the reporter can get it. Were you asked the following questions and did you make the following answers:

Q. And you saw them—now this is referring, is it not, to the tracks we were just speaking about?

A. Yes.

Q. And you saw them following tracks the trailer would have taken beginning up here quite a ways north of the accident on the north side of the road?

A. That is correct.

Q. And you saw that they come straight south coming for a distance of how far would you say?

A. 85 paces.

Q. Is that from the north side of the driveway to this?

A. Yes, from 8 or 10 feet from the north side of the driveway.

Q. Then you say they took a definite turn to the driver's left? A. That is correct.

Q. Would you say they were straight across there then?

(Testimony of Martin Lamb.)

A. Generally a straight line. [231]

Q. Very near straight? A. Yes.

Q. Now did you so testify upon this deposition?

A. I think I did.

Q. Is that correct to your best recollection?

A. Yes. At that time I was under the impression that tree was somewhat north of the driveway.

Q. In other words, you now feel the angle started a little north of where you said it did in the deposition?

A. It could be a little south because at that time it shows this tree very nearly here in a straight line with that driveway, and I was under the impression it was 8 or 10 feet north and that is what I marked the turn at.

Q. You still feel it would be approximately opposite this driveway where the turn started?

A. Yes, right in that neighborhood.

Q. Now was there any particular evidence of any skidding, in the portion of the tracks we are talking about, was there any particular evidence of any skidding north of the place where the turn was made and where it started angling south and eastward?

A. That would be north of this drive?

Q. That is right.

A. I wouldn't even say that there was a pair of wheels making tracks; it could have been front wheels and hind wheels following each other across the road and it could have been [232] the other way.

(Testimony of Martin Lamb.)

Q. Do you recall having testified that there was no particular evidence of any skidding; that there was no skid action shown?

A. I said there was no evidence of them whipping, yes.

Q. I am speaking about skidding, Mr. Lamb.

A. Now what do you consider skidding?

Q. I am not testifying, Mr. Lamb. I am just asking you what you saw that day and how you testified in the deposition. You didn't go north of the irrigation ditch or rather the point on the road north of the irrigation ditch to observe or check the condition of the road on that day, did you? A. No.

Q. And do you recall having testified at Worland at the deposition that you did not have any occasion to examine how far north the road condition extended, is that correct? A. That is right.

Q. The place to which you drove later in the afternoon was a point approximately a half to three-quarters of a mile north and east of this?

A. It was in the morning.

Q. In the morning before the accident?

A. Yes.

Q. But it was in a direction north and east almost exactly, was it not, from the place of the collision?

A. Very nearly. Yes, very nearly north [233] east, east.

Q. Approximately half a mile east of the highway at that point? A. Yes.

Q. You didn't know whether those tire marks



(Testimony of Martin Lamb.)

that you saw were made by the truck, that is, the tractor or the trailer, did you, Mr. Lamb?

A. No.

Q. You couldn't tell because of the collision and the possibility of the vehicles having moved in different directions?

A. Without doubt they had moved somewhat.

Q. So is that why you couldn't tell?

A. Well not only that but you couldn't at the time I saw it then you couldn't follow them right up to the outfit. In fact the south track in particular, I think possibly the north track followed pretty well to the edge of the road but the other one it melted back.

The Court: We will take a recess. (3:40 p.m.)

(Court resumed at 3:50 o'clock p.m., at which time all counsel and plaintiff were present.)

### MARTIN LAMB

resumed the stand and testified as follows:

### Cross-Examination

(Continued)

By Mr. Haughey:

Q. Mr. Lamb, before the recess I think I asked whether or not you had testified in a deposition that a part of the [234] tracks to the north of the scene of the accident, that part of those tracks leading in a southerly direction showed no particular evidence of a skid mark and that as a matter of fact they showed a brake action but no skid action. Now I am

(Testimony of Martin Lamb.)

mistaken about your having testified that way in a deposition but let me ask you if you did testify to that effect at the cases tried here last week arising out of this same accident?

A. I believe that I did.

Q. And was your testimony in that respect correct?

A. I think so. I think that my statement on that was it showed no definite skid action.

Q. In your deposition did you distinguish between the type of mark left north of that angle and the part of the tracks leading southeasterly?

A. Not—I don't recall now.

Q. I am showing you again a copy of the deposition. You were asked: And that made a skid mark or track of 125 paces? Your answer: No, it made a skid track of 40 paces. Question: What was the other braking track? Your answer: You mean all together? Question: That is correct. Answer: Yes, 85 paces headed south and 45 paces headed at the angle across the highway; 125 paces is approximately what it would be.

Q. That was your testimony?

A. I think that is correct.

Q. Showing you, Mr. Lamb, what has been marked Defendant's [235] Exhibit No. 8, is that a fair picture of the scene of the accident from the north facing the town of Worland?

A. You mean with all conditions the same?

Q. No, I don't mean as to the surface of the highway but as to the locale?

(Testimony of Martin Lamb.)

A. The general locale, yes.

Q. And does it show fairly the Sam Piel house at the left side? A. Yes.

Q. And the yard to the front and west of the Sam Piel house?

A. The yard has been changed somewhat there.

Q. Since the picture was taken?

A. No, between the time of the accident and this.

Q. Between the time of the accident and the taking of this picture?

A. Yes. I would say that picture was possibly taken, my best estimate of that would be the latter part of January.

Q. In other words, something like a month after the accident? A. I think so.

Q. I didn't realize it was that long. Showing you what has been marked Defendant's Exhibit No. 9, is the same condition true? Does that show correctly the location of farm machinery you spoke about?

A. No, there was a good deal more machinery at that time over here. I think you will find that spring Piel's were making [236] for a sale and they were dragging machinery around there steadily at that time.

Mr. Haughey: I offer this No. 9 as an exhibit.

Q. Does Defendant's proposed Exhibit No. 9 show correctly the angle in the highway to the south of the scene of the accident and the position of the bridge with respect to that highway?

A. I think so. Now what the highway angles at I really wouldn't say. There was an angle. It makes

(Testimony of Martin Lamb.)

a jog just the width of the oilmat or about the width of the highway. The highway follows the same course as quick as it makes that again as it was before.

Q. Does that jog in the road make it appear from the north that the bridge is somewhat narrower than the total width of the bridge, road?

A. Oh, it might. However, if you are looking down the oilmat, you could see it was wider than the oilmat is.

Q. If you could clearly see the edge of the oilmat under the conditions at the time?

A. Yes, I am sure that you could then.

Mr. Lush: I object to this testimony, your Honor, on the ground that the picture is the best evidence, the opinion of the witness with reference to optical illusion that might exist over and above that shown in the picture was not gone into on direct examination and is not proper [237] cross-examination, and if he would like to call the gentleman as his witness, he could proceed.

The Court: Yes, I think perhaps the objection is good.

Mr. Haughey: We offer in evidence Defendant's Exhibit No. 8.

Mr. Lush: Could we have some information on when this picture was taken?

Mr. Goppert: January 17, 1947. That is in one of these other depositions.

Mr. Lush: Then no objection, your Honor.

The Court: It may be received in evidence.

(Testimony of Martin Lamb.)

(Whereupon said Defendant's Exhibit No. 8, being a photograph, offered and received in evidence, is a part of this record.)

Q. (By Mr. Haughey): When did you make the examination of the tracks, Mr. Lamb?

A. I wouldn't have any idea really what time it was but it was sometime after I was there. After I first arrived on the scene it was quite a little while after that.

Q. Had the bodies been removed from the bus at that time?      A. No.

Q. Was Mr. Ward, the Highway Patrolman, there at that time?

A. I rather believe that he was but I wouldn't definitely [238] state whether he was or not.

Q. Have you any estimate about how long after it was you arrived?

A. I would have no way of estimating that. It would have been, I think, sometime after an hour had elapsed.

Q. You drove to the scene of the accident from the south, did you not?      A. Yes.

Q. And can you tell us the speed at which you traveled?

A. Not exactly. My speedometer was broken at that time.

Q. Can you estimate the speed?

A. Oh, I don't think I traveled over 20 or 25 miles an hour.

Q. Did you skid on the way down to the scene of the accident?



(Testimony of Martin Lamb.)

A. Not that I recall. I did slip the wheels slightly when I first saw it and got in a hurry.

Q. Didn't you testify in the other trial you slowed down when you began to slip on the highway?

A. Yes, when I began to slip. I did hit the gas and I realized then really how slick it was.

Q. Was it very slippery to the south of the spot of the accident?

A. It was very slippery, however, I was driving an old model car which really was not in too good shape for steering. I wouldn't base what I could drive it against anything else [239] in the world.

Q. Did the condition of the highway at the scene of the collision interfere with your checking the tracks left by the two vehicles?

A. How was that again, please?

Q. Did the condition of the roadway interfere with your checking of the tracks left by the vehicles?

A. It was slick around there. If I remember right, you would slip around and I didn't do any measuring or pacing that day.

Q. Was the reason you didn't make any measurements it was slick?      A. That is right.

Q. Was your answer, that is right?

A. Yes.

Q. Now showing you Defendant's Exhibit No. 5, I will ask you if you will mark the two tracks which you paced and checked, that is, which you checked on the day of the accident and stepped off or paced sometime later?

(Testimony of Martin Lamb.)

A. What kind of marks do you want?

Q. Mark 1 and 2. 1 on one track and 2 on the other. Will you put circles around those so they will be distinguishable. Now do those tracks which you have now marked 1 and 2, and which proceed in the direction of the vehicles, are those the tracks which you marked and checked that day?

A. Yes, those are the ones.

Q. Were those the only ones north of the scene of the [240] accident that you could at all connect with the truck and trailer?

A. At the time I did that I was not trying to connect or reconstruct.

Q. Did you see any other tracks which you thought lead to the truck and trailer?

A. No, I didn't.

Mr. Haughey: That is all.

Mr. Lush: You may step down.

### WILLIAM H. DEES

was called as a witness for plaintiff, and having been first duly sworn, testified as follows:

#### Direct Examination

By Mr. Lush:

Q. Will you state your full name, please?

A. William H. Dees.

Q. Where do you live, Mr. Dees?

A. Worland, Wyoming.

Q. What is your occupation?

A. At present?

(Testimony of William Dees.)

Q. Yes. A. Truck salesman.

Q. And calling your attention to the date of the accident, December 27th, 1946, about 2:30 p.m. were you riding on a bus that was involved in an accident about 9 miles north of Worland?

A. I was. [241]

Q. And where were you seated on that bus?

A. I believe it was the second seat from the front on the right hand side of the bus.

Q. Were you seated over next to the window?

A. Next to the aisle.

Q. And as you approached the scene of the accident did you observe another vehicle coming from the opposite direction? A. I did.

Q. And about where was that vehicle if you can locate it on the map at the time when you first observed it?

A. It was about at the culvert.

Q. About at the culvert you say? This irrigation lateral, is that what you are referring to?

A. Yes.

Q. And did you observe where the bus was at that time?

A. It was just south of the Piel mail box, I believe.

Q. Pardon?

A. Just south of the Piel mail box.

Q. And where was the Piel Brothers mail box with reference to the driveway into Sam Piel's home, north or south?

(Testimony of William Dees.)

A. I believe it was on the north side of the driveway.

Q. And did you observe that mail box at about the same time you observed the vehicle approaching from the opposite direction?

A. I just noticed the mail box and I looked up and saw the truck.

Q. And what motion did you observe the truck to make as [242] it came south from the point where you first observed it?

A. I didn't get that question.

Q. What was the motion of the truck, if any? What was the attitude of it on the road when you first observed it; was it running in a straight line or swerving?

A. It was straight when I first saw it.

Q. And did you observe it swerve after that?

A. Immediately after it did.

Q. And to which side did it swerve?

A. To the east slightly.

Q. And did it straighten out after that swerve?

A. Some.

Q. And did you observe it swerving again?

A. It did.

Q. And did it straighten out after that swerve?

A. Very little.

Q. And calling your attention to Defendant's Exhibit No. 5, would the track marks shown on Defendant's Exhibit No. 5 then fairly represent the course that was followed by the trailer or the truck in coming across the road from the drive opposite

(Testimony of William Dees.)

the Martin Lamb house? This is the Martin Lamb; the drive opposite the Martin Lamb house, is that a fair representation of the course followed by either the tractor or the trailer afterwards?

A. It was in the last dive. [243]

Q. In the last dive; in other words, the truck swerved the third time, did it? A. It did.

Q. And this represents roughly the course that followed, is that correct, as you remember it, or doesn't it, if it doesn't? A. Yes, it does.

Q. And in what position was the tractor part of that truck as it came down the highway toward you?

A. Well there was a lot of different—which one do you mean?

Q. Starting with this last swerve, what was the general——

A. This last dive it went to the east. He was on his side of the road and then he came back to the east and started back to the west, and then he slid down the road sideways for some distance, I wouldn't say just how far just before they hit.

Q. And were you observing that truck all the time as it was approaching you? A. I was.

Q. Did you observe the truck when it first started turning sideways toward you on the last swerve?

A. On the last one?

Q. Yes. A. I did.

Q. This third one, I guess you did describe it. What can you tell us with reference to the position of the wheels or the movement of the wheels of the



(Testimony of William Dees.)

truck as it first started to turn sideways on that last swerve?

A. They were definitely locked on the [244] tractor.

Q. On the tractor. And did you keep watching the wheels?

A. I was watching the tractor in general. I do know that the wheels were definitely locked in the last dive.

Q. And do you know whether or not they remained locked as the truck came down the road towards you?      A. Sideways?

Q. Yes.

A. They were. They wasn't moving. I guess they were locked.

Q. Do you remember the movements of the bus from the time that you first observed the truck?

A. I do.

Q. Coming towards you. And what were the bus movements, as you recall?

A. It was gradually slowing down.

Q. And did you observe whether or not the bus driver was applying the brakes?

A. I couldn't tell you.

Q. And do you have any idea of the speed at which the bus was going when it approached Sam Piel's driveway?

A. Probably 20. When it approached the Sam Piel driveway?

Q. Yes, coming to Sam Piel's driveway?

A. Oh, probably 30, 35.

(Testimony of William Dees.)

Q. And do you have an opinion as to the speed of the bus at the moment of impact?

A. Probably 20, 25. [245]

Q. Did the bus to your knowledge turn from a straight line from the time it left Sam Piel's driveway until the moment of impact?

A. It went straight up until just before it hit.

Q. What was the movement just before it hit?

A. It seemed to me that there was movement to the east slightly.

Q. You mean to the right?

A. The bus driver's right, yes.

Q. And where did the impact take place with reference to the bridge, if you know?

A. Well I would guess probably 10 feet north of the bridge.

Q. And what was the position of the bus with reference to whether it was pointed north or south or east or west at the moment of the impact?

A. Well I didn't see it hit.

Q. You felt it, however?

A. I felt but I didn't see it. I saw it just before it hit.

Q. And just before it hit what was the position of the bus?

A. Well I would say the bus was north and slightly east.

Q. Did it appear to you that the bus driver was attempting to turn the bus just before the impact?

A. I believe he was. [246]

(Testimony of William Dees.)

Q. And what was the position of the bus after the impact, do you know?

A. I couldn't tell you.

Q. Do you know where the bus came to rest or didn't you observe that?

A. No, I wouldn't say.

Q. Now at any time while you were riding on that bus—where did you get on it?

A. The front door.

Q. And what town?

A. Where did I get on?

Q. Yes. A. Oh, in Worland.

Q. At any time after the bus left Worland did you feel it skid?

A. No, I don't believe I did.

Q. And did the driver seem to have any trouble keeping the bus under control?

A. No, not at all.

Q. What was your occupation at the time of the accident? A. I was in the trucking business.

Q. And were you in business for yourself or were you working for somebody?

A. For myself.

Q. Have you had experience in driving trucks and trailers, truck-trailer combination?

A. I have.

Q. The truck involved in this accident is described as a tandem rear drive International West Coast Special, have you ever driven that particular type of truck? A. That particular kind?

Q. Yes. A. Not a West Coast, no.

(Testimony of William Dees.)

Q. Have you driven similar trucks? [247]

A. W.D. 28 White. That is, I believe, classed as a size smaller.

Q. And the trailer involved in this accident, I believe the picture shows I believe is a tandem, has tandem wheels on the rear and has no wheels on the front, rests on the tractor and is known as a semi-trailer, I believe? A. Yes.

Q. Have you had occasion to pull such vehicles?

A. I have.

Q. How many years experience have you had driving tractors with semi-trailer?

A. Four or five years.

Q. Have you had experience driving such vehicles on icy roads? A. I have.

Q. And where, in what general area have you driven those vehicles? Have you driven through Wyoming with them? A. You mean on icy roads?

Q. Yes. A. All over the State of Wyoming.

Q. Have you driven them both north and south on Highway 20? A. I have.

Q. Have you ever previously made estimates of the distances that the vehicles were apart at the time when you first observed them?

A. I estimated 300 feet.

Q. If the distance from the middle of the drainage ditch [248] to the point of that lateral, that irrigation lateral is 425 feet, and if the distance from the middle of the drainage ditch to the Sam Piel driveway is 165 feet; in other words, assuming that map to be correct would you care to correct your

(Testimony of William Dees.)

previous estimates as to how far the vehicles were apart when you first observed them?

A. That would be 700—you mean from where they were apart from this drainage?

Q. You estimated did you say previously the vehicles were 300 feet apart? A. Apart.

Q. Now if it is 425 feet from the irrigation lateral to the middle of the drainage ditch, and it is 165 feet from the middle of the drainage ditch to the Sam Piel driveway, middle of the Sam Piel driveway? A. It would be around 700 feet.

Q. Then would you care to revise your estimate as to how far apart those vehicles were when you first observed the truck?

A. Well I was wrong about it according to this map. The map says around 700 feet, a little over. I was evidently 400 feet short.

Q. And your best recollection at the present time is that those, information is that those vehicles must have been 700 feet apart when you first observed the truck? A. According to the map. [249]

Mr. Lush: That is all.

### Cross-Examination

By Mr. Goppert:

Q. Mr. Dees, as I understand you now you were riding in this bus and sitting in the seat right behind where Mr. Whiston was sitting?

A. That is right.

Q. That would be the third seat from the front on the righthand side next to the aisle?



(Testimony of William Dees.)

A. Yes, that is right.

Q. And your view of the Sam Piel mail box was out through the front window, was it not?

A. That is right.

Q. And you observed, did you not, a lady sitting in the front seat, or was she laying down?

A. Laying down.

Q. On the righthand side?

A. She took up the whole seat.

Q. That is the seat in front of the door?

A. That is the seat right beside the driver's seat.

Q. Now then the door takes up one space so there is a missing seat there?

A. Yes, that is right.

Q. So you are in the fourth space back on the east side of the bus?

A. Assuming there was a seat where the door was.

Q. If you figure it from the other side, it would be the fourth seat back on the lefthand side, wouldn't it? It [250] would be the same place as the fourth seat back on the lefthand side?

A. I couldn't examine it that close.

Q. Anyway you were very close to the middle of the bus from front to rear?

A. I believe I was closer to the front than I was the rear.

Q. Probably one or two seats, weren't you?

A. At least two.

Q. Anyway it was from that position that you got your view of this accident?

(Testimony of William Dees.)

A. That is right.

Q. And as I understand you you observed a truck coming down the road toward you, toward the vehicle in which you were riding?

A. That is right.

Q. Of course, you couldn't tell that was a West Coast Special when you first saw it?

A. Maybe not when I first saw it but shortly after I saw it I knew it was a West Coast.

Q. You discovered it was a West Coast Special shortly after you saw it? A. Yes.

Q. Was it when it made the first little jog there or the second?

A. I don't remember which jog but shortly after I decided what kind of a truck it was.

Q. Well it was not the fact that it made a job that made [251] you think it was a West Coast Special, was it? A. I don't know about that.

Q. Well you tell me if you can place the time that you identified that truck with reference to its course toward you?

A. Oh, just guessing I would say probably in the second dive.

Q. In the second dive. That is before the third swing across the road you knew it was a West Coast Special?

A. He swerved a little the first time.

Q. Now you saw it had a trailer on it, didn't you? A. No, I didn't.

Q. You didn't see a trailer on it?

A. No, I didn't.

(Testimony of William Dees.)

Q. You saw and knew an insignia on it, didn't you?      A. I did.

Q. Well where was it with reference to its course down to you when you saw that insignia on it?

A. The first time? I saw it two or three times.

Q. Now two or three times. I only thought you saw it twice. Now it is three times. Tell me the first time?

A. I believe when he was going back to the west on the second dive or when he was completing the second dive I believe is the first time I saw the name.

Q. Now you say these were dives?

A. Didoes, whatever you want to call them. [252]

Q. Didoes you call them. As a matter of fact what you are trying to tell me is that you saw that truck, the truck part without the trailer swaying back and forth across the road?

A. That is right.

Q. It didn't come in a straight course down its own side of the road from that culvert?

A. Well when it come out of it, every time it would complete its dido, it would straighten up a second before it would start in the other one.

Q. Let's get the width of these didos. Was it sliding from one side of the road to the other?

A. You mean from the first time I saw it?

Q. That is right?      A. No.

Q. It didn't, the whole truck didn't slide back and forth from east to west and west to east?

(Testimony of William Dees.)

A. Sure it did. Not at the first it didn't.

Q. Now I want you to tell me about that first dido, dive, or whatever you want to call it?

A. He just swerved first.

Q. The front end swung to the east and then swung back to the west?

A. Some to the east; it wasn't a big one.

Q. Would you say it swerved two feet to the east?

A. I don't know. I couldn't estimate that far away.

Q. Well did it swerve half the width of it? [253]

Q. Or did it seem like it was going over a rough road and swinging back and forth?

A. I just said it swerved. I don't know how far.

Q. As a matter of fact you aren't able to describe that swerve any more than you have right now?

A. Not the first one, no.

Q. Was it a foot or two off a straight line?

A. Oh, I would guess two or three feet probably.

Q. Now then I want to get this thing straight and that is about this approximate distance apart when you first observed that truck and the bus in which you were riding. You knew where it was with reference to this bridge? The first thing that entered your mind was that they were going to pass on this bridge, isn't that a fact?

A. No, I don't believe I just really thought they were going to pass on the bridge. I might have thought they would probably meet at the bridge.

(Testimony of William Dees.)

Really I don't remember. It would have been right close to the bridge all right.

Q. You said it looked like they would pass close to the bridge?      A. Yes.

Q. Now isn't it a fact you actually believed when you first saw it that they were going to meet and pass on the bridge unless somebody did something about it?      A. I don't remember that.

Q. You remember testifying in December of 1947 about [254] that, don't you? Directing your attention to page 8 of your deposition given at Worland, Wyoming, in December, 1947, I will read the questions and answers and you check it and see if that isn't a correct statement of your testimony at that time:

Q. It was on its own side of the road headed in your direction?      A. Yes, that is right.

Q. Headed as though it was going to pass you?

A. That is right.

Q. Didn't it look like the two of them might pass on this bridge?

A. If he had kept coming, yes.

Q. Did you so testify at that time?

A. I did.

Q. If he hadn't slowed down, you would have passed on the bridge?      A. That is right.

Q. Did you so testify at that time?

A. I think you are asking me one question before and then you asked me another one here.

Q. The question is: If he hadn't slowed down, you would have passed on the bridge? Answer: That is right.



(Testimony of William Dees.)

A. I might have said that. He wasn't talking about that, about the swerve he was making between the time—I didn't [255] know how many swerves he was going to make.

Q. That would have slowed him down?

A. Yes.

Q. If he had been going at the same speed?

A. In a straight line.

Q. You would have passed on the bridge?

A. Possibly.

Q. And you still believe from your recollection of it that that is what would have happened if it hadn't swerved or hadn't slowed down, or if your bus had not slowed down, they would have passed on the bridge?

A. Possibly.

Q. So in order to come to that conclusion on your part you observed this vehicle was going about 35 miles an hour, didn't you?

A. At the time I first saw it?

Q. When you first saw the other vehicle?

A. About that.

Q. And you could see from your judgment the vehicle was coming toward you at approximately 35 miles an hour, wasn't it?

A. I don't know. It could have been 35 or 45 or 50 as far as I am concerned. I couldn't tell.

Q. You don't know anything about that?

A. I couldn't tell how fast a man was going as the map shows 700 feet away. [256]

Q. Now, you observed just before the collision

(Testimony of William Dees.)

this truck and it didn't, so far as you could see didn't have any trailer on it and you could observe the position the truck was in, couldn't you?

A. That is right.

Q. I believe you said that this Exhibit 5 showed the approximate final course, is that right?

A. In the first part of the third dive.

Q. The first part of a third dive?

A. He was like this.

Q. It shows a mark here that goes clear across the road a parallel set of marks, is that the approximate course that the truck took across the road that you saw?

A. Then he got here where you see the tracks looks like went into the barrow pit; he come back again and right there is where they hit. In what direction was that taken?

Q. From the north looking south. See, your bus is down there.

A. I see. Yes, that is right.

Q. Let's get this straight. As that truck came across that road it circled. Could you locate on there any natural object about where it started from the west side to the east side; would you name some natural object there if you recall?

A. You mean when I first saw it?

Q. Now, when it came across the road when it made the first dive or dido.

A. I wasn't paying any attention to objects right then. [257]

Q. It traveled what part of the distance from

(Testimony of William Dees.)

where you first saw it to where it finally stopped, if you could give that approximately?

A. I don't know.

Q. Well, let's take it on one more basis. It started approximately from the east side of the road on this third dive or dido, didn't it?

A. Yes.

Q. And other people located that at approximately the west end of the Lamb driveway near that clump of trees there and they saw it coming across the road a distance of approximately 125 feet crosswise across the road, is that your recollection of it that it swung across the road a distance of about 120 feet?

A. I imagine he went around 100 feet, just estimating.

Q. Was it while it made that dive or trip across the road that you saw the Manning Company sign?

A. I did.

Q. On which side would it be, on the left door or the right door?

A. On the right door.

Q. You saw it on the right door, then the truck was headed southeasterly then, wasn't it? The front end was going across the road toward the southeast?

A. Yes, that is right.

Q. And just before they collided did I understand you to say that the front end then headed southwest?

A. West.

Q. Or west, and you saw the sign again then, did you?

A. I did. [258]

Q. And then you saw it on the other door, the

(Testimony of William Dees.)

one on the lefthand side just before the collision?

A. That is right.

Q. And you saw that close enough, did you not, so that you could observe the speed of it as it was coming across the road?

A. Oh, I could guess.

Q. How? A. I would just guess.

Q. And you said the bus was going about 20 when they collided; was the truck coming about 20, too?

A. Both of them I figure were going between 20 and 25 at the time they hit.

Q. Both of them were going about the same speed when they hit? A. That is right.

Q. But the bus was going toward the southwest, is that right? I mean not the bus, the truck?

A. It was headed to the west the last time I looked at it.

Q. And you could tell from where you sat in that fourth seat back from the front that the front, the left front corner of the bus was going to collide with the truck at approximately?

A. Six inches to 1 foot behind the cab.

Q. What?

A. Six inches to 1 foot behind the cab.

Q. Now, that was your testimony previously, wasn't it? [259] A. Yes.

Q. And you could actually do that in spite of the fact both of your vehicles were moving? You saw the bus say coming east and the truck going to

(Testimony of William Dees.)

the west, or southwest, whichever it was, you could tell they were going to collide at that point?

A. That is right.

Q. And you never saw the actual collision?

A. No.

Q. About how far apart were those two points you saw were going to collide when you last did observe? A. They wasn't very far.

Q. Two feet, 10 feet?

A. I don't think it could have been over 5 feet.

Q. How old are you? A. Twenty-five.

Q. You were 23 then? A. Yes.

Q. Where was it that the tractor, this Manning truck, slide down the road sideways; where was it doing that?

A. Just before it hit, just before the impact.

Q. Now, I want to get that straight. The front end was headed west or southwesterly and it was coming sideways, was it? A. Sideways.

Q. How long had it been in that position?

A. Oh, I would say very—I don't know, those feet went by pretty fast.

Q. Beg your pardon?

A. It was going by pretty fast or coming pretty fast; [260] possibly 75 or 100 feet.

Q. Had it slid in that position from the center of the highway across the road? A. No.

Q. And it took that position when it got on the east side of the road?

A. When it got on the east side of the road and then turned back to the west. It was on our side of the road sliding sideways until it hit.



(Testimony of William Dees.)

Q. Would you say it slid sideways the last 10 feet before the collision?

A. No, I wouldn't say 10 feet before the collision.

Q. Fifty feet? A. Possibly 75 or 100 feet.

Q. All right, it slid sideways into this bus sideways a distance of 75 feet? A. Roughly.

Q. I want to get that position to make it clear. I am not trying to confuse you. I am trying to get the exact fact. Because you gave me so much detail I want to get it right. We come back then to this course of this track that shows in Defendant's Exhibit No. 5, a distance of 75 feet toward the north, and that is where the truck, as I understand you had the front end of it headed westerly and the rear end was easterly, and it was sliding sideways, and it took that course then in a sort of southeasterly direction, is that right?

A. Give me that question again.

Q. I believe I had better put a preliminary to that this [261] way. Was the front of the truck with reference to the rear, was it headed east and west or was it from the southwest to the northeast?

A. Just before they hit you mean?

Q. Well, that last slide, that last 75 foot slide?

A. Yes, it was headed east and west.

Q. You mean due east and west?

A. Well, roughly guessing.

Q. Approximately east and west? A. Yes.

Q. Across the roadway and it was sliding down that roadway in a general—well, was it skidding

(Testimony of William Dees.)

toward the center of the road, toward the easterly side of the road?

A. From the center it would be the east in that last 75 feet that I estimated?

Q. Yes.

A. No, he was sliding mostly south I would say.

Q. It was almost coming straight south?

A. That is right. It could have been a little slightly twisted one way or the other.

Q. It wasn't rolling on its wheels either easterly or westerly; it was going sideways?

A. It was definitely sliding.

Q. So what you said a while ago about the wheels being locked was that you guessed they were locked because they weren't turning? [262]

A. That is one reason and also the way the truck was acting I knew his wheels was locked.

Q. Because it was skidding?

A. That is right.

Q. Did you ever see a truck skid without its wheels being locked?

A. Not like that one did.

Q. Now, you tell us how it would differ from one that didn't have its wheels locked, if you could?

A. Say this was, say you had a rough spot in the road with a truck and you didn't get on your brake and yet your truck slid, which sometimes they do, not very often.

Q. They do do that if they are on ice?

A. On ice it might slide a little, or it might just

(Testimony of William Dees.)

wiggle a little, a foot or may even go 2 or 3 feet just the second it hits, but as long as you don't get on your brake it will straighten up.

Q. Now, then, you didn't check the tracks at the scene of the accident?

A. As far as I am concerned I don't know anything about it.

Q. And you do know the West Coast Special has brakes on all wheels front and rear on the tractor?

A. That is right.

Q. And you would normally expect then to see had you investigated the scene of the accident four separate tracks, wouldn't you?

A. Not necessarily.

Q. Well, you wouldn't expect to see just two that were [263] approximately the width of the regular wheel tracks?

A. You wouldn't necessarily see four, either.

Q. Well, you would either see four or some of them would have to follow the others, wouldn't they, if the wheels were locked, isn't that right?

A. If it was sliding sideways or when it was making these dives if it should slide sideways, then you would make out a track every now and then.

Q. The tracks would be irregular then, wouldn't they, and they would cross over and they wouldn't be equidistant, would they, isn't that all right?

A. Not all of them wouldn't be equal but two of them would be either if he was sliding sideways or even if he was sliding straight.

Q. Which two would those be that would be

(Testimony of William Dees.)

equal? A. It could be the front or the rear.

Q. But if there were only two tracks then the only way it could be sliding would be front to rear or rear to front?

A. The two tracks would have to be just sliding straight down the highway.

Q. Now, what you saw was a truck coming sideways, that is, almost due east and west across the highway, and headed almost straight south; that is what you saw that last 75 feet, isn't it? [264]

A. No.

Q. What was it you saw?

A. What was that question?

Q. As I understood your evidence you picture this thing for the last 75 feet of the slide of the truck before you had the collision with it, that the east—no, I mean the front end of it was headed west and the rear end was headed east, and it was sliding southerly toward your bus on your side of the road? A. Yes, that is right.

Q. Now, just before it got into that position had it then headed with the rear wheels following the front wheels or did it just gradually go into that position?

A. When it came out—when it started in its third dive it straightened up just for a second and then it turned to the east.

Q. The front end?

A. The front end turned to the east and then it twisted back to the west, and when it twisted back

(Testimony of William Dees.)

to the west he never did get it back to his side of the road; he slid sideways.

Q. Then the course between you and me is the highway we can take the truck on the west side; it starts heading southeast? A. That is right.

Q. And comes about half way across the road, is that [265] right?

A. No, he came definitely on our side of the road and over on the shoulder a little bit.

Q. Clear across on the shoulder a little and then the front end headed west?

A. That is right.

Q. And the front end got almost from east and west and then it slid down the road on the east side?

A. That is right.

Q. In a southerly direction?

A. That is right.

Q. Until the point of the impact was finally reached, which you place approximately 10 feet north of that bridge? A. That is right.

Q. And that slide was being made at approximately 20 miles an hour when you last saw it just before the impact? A. That is right.

Q. Did you say that last final slide was approximately 75 to 100 feet? A. Yes, sir.

Mr. Goppert: That is all.

### Redirect Examination

By Mr. Lush:

Q. Now, Mr. Goppert asked you on cross-examination, I believe, whether or not you had expressed



(Testimony of William Dees.)

the opinion sometime in the past that these two vehicles would meet on the bridge [266] if they both maintained their speed, is that right?

A. That is right.

Q. From your experience as a truck driver and from your knowledge of Highway 20 in driving over it and from your knowledge of the size of the regular road buses, do you know whether or not those two vehicles could pass over the bridge at the same time? A. Definitely, they could.

Q. Have you had occasion as a truck driver to meet with buses on bridges like that?

A. I have.

Q. And have you met with buses such as that on icy highways on bridges?

A. I have met them on bridges where I didn't know whether they were going to beat me to the bridge or I would beat him, but we didn't meet on the bridge, but I guess I was just lucky and beat him to it.

Q. On a bridge that size would be no particular danger in passing a bus on the bridge, would there?

A. Not one of that kind.

Q. Now, Mr. Goppert asked you about how you knew that the wheels were locked on that truck and you said something to the effect that you could tell by the movement of the truck. Can you explain that more clearly for the Court?

A. Well, any time you are going down the highway and you, and the highway is icy and you jump on your brakes on a tractor if he was pulling a

(Testimony of William Dees.)

trailer which they say he was, but I didn't [267] see it, and you get on your tractor brakes your trailer will push you and whenever your trailer pushes you you will start jackknifing. As long as you stay on your tractor brakes she is not going to straighten up. I don't see yet how he ever kept it on the road, but that is just a miracle happening or something because they don't usually do things like that.

Mr. Lush: That is all.

### Recross-Examination

By Mr. Goppert:

Q. Did I understand you to say that you consider the proper way of driving a truck to pass another vehicle on a bridge?

A. If you knew the bridge.

Q. Or would you try to beat him to it?

A. If this was on ice and the ditch is too deep to take, there is only one thing to do, either beat him to it or him beat you to it.

Q. If you are on ice, you want to run a race with him to see who gets there first?

A. If the ditch you figure is more dangerous and isn't enough room on the bridge to meet the bus, then I would say try it. I would.

Q. In other words, try to beat him to the bridge?

A. That is right. [268]

Q. Do you believe that would be safe practice for driving of a truck?           A. I know it is.

(Testimony of William Dees.)

Q. On ice?

A. You can't stop, then I don't care who he is.

Q. Suppose you hit a bump and had skidded?

A. As long as he keeps his foot on the carburetor she won't do it not on a straight stretch.

Q. You believe that it is good practice as a trucker that he should beat them to the bridge?

A. If you can avoid meeting them on the bridge, avoid it, but whenever you get in a predicament like he was in and on the bridge you might as well go ahead straight because he is either going to ditch it or get over or meet on the bridge, which that is the worst thing to do.

Q. To meet on the bridge?

A. To get on the brakes.

Q. To get on the brakes?

A. That is right, especially the tractor brakes.

Q. How about putting the trailer brakes on?

A. That is the proper brake to use.

Q. And if he used trailer brake, he used the proper brake?

A. That is right.

Q. And that if that didn't slacken his speed, shouldn't he put on a combination of the both, maybe, then?

A. On a big outfit like that if the trailer is a proper [269] trailer for that truck, whenever he gets on his pedal he is on his tractor and trailer brakes at the same time.

Q. Do they have a separate system for the trailer?

A. They have.

Q. It is on the steering wheel, isn't it?

(Testimony of William Dees.)

A. That is right.

Q. Isn't it common practice for truck drivers to first apply the air to the trailer?

A. That is right, on ice.

Q. Yes, that is what I mean. I am talking about on icy roads. And isn't the next step, if that don't slacken your speed, you also do what they call fanning the brake? I mean your foot brake and get your foot off the gas?

A. Just as long as you don't let your wheels slide.

Q. You do it by a sort of trial and error, you put your foot on to see how much it will take and then you would take it off; that is what you call fanning the brake, isn't it? A. Yes.

Q. And in that position you have got your foot off the throttle and you are tapping your brakes to see how much they would stand before there is any evidence of skidding so far as you are concerned?

A. That is true.

Q. And if you feel any evidence of skidding, you immediately get your foot off that brake and slip it on the throttle? A. That is right. [270]

Q. That is the way an experienced trucker does?

A. That is the way I do.

Q. Isn't that the common practice among truckers? A. Yes, it is.

Q. From what you observed of that truck weaving in and out those two times he was doing that, wasn't he?

(Testimony of William Dees.)

A. No, he definitely was on his brake, on his tractor brake.

Q. It is attached up so that the trailer is on the tractor?

A. It wasn't working. There was something wrong with it. Any time you get on your trailer brakes on an icy road where the road slope like that road is your trailer will go in the ditch.

Q. You never saw a trailer on this one?

A. No, but your argument is a trailer is on it and I am just agreeing with you on that.

Q. Which ditch would the trailer go in?

A. If he was in the middle of the road and your trailer was one farther on one side than the other, it would go into the ditch the slope of the road.

Q. In other words, it would have gone into the ditch on the west side of the road?

A. The west, yes.

Q. That is where it would have gone if he had had the [271] tractor brake fixed?

A. No, if he had the trailer brake fixed.

The Court: I think you are through with this witness. There is a good deal of repetition here. Call your next witness.



GEORGE F. HONEYCUTT

was called as a witness for plaintiff, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lush:

Q. Will you state your full name, please?

A. George F. Honeycutt.

Q. Where do you live, Mr. Honeycutt?

A. Previous or lately?

Q. At the time of this accident where did you live?

A. I lived at Worland, Wyoming.

Q. Where you you live now?

A. Powell, Wyoming.

Q. And in calling your attention to the date December 27, 1946, at about 2:00 p.m., where were you about that time, do you know?

A. I believe I was en route to Worland.

Q. And where were you coming from?

A. From Pure Oil No. 2 north on Highway 20.

Q. And as you came south on Highway 20 where did you come on to Highway 20?

A. At Reardon. [272]

Q. At Reardon. And how far north of the scene of the accident is Reardon, do you know?

A. Possibly three miles.

Q. And as you—were you driving?

A. Yes, sir.

Q. And what were you driving?

A. A ton and a half Chevrolet winch truck, C.O.E. cab over engine.

(Testimony of George F. Honeycutt.)

Q. And as you approached the scene of the accident or as you came south from Reardon did you observe the nature of the road surface from Reardon to the scene of the accident? A. Yes, sir.

Q. And what was the nature of the road surface from Reardon to the scene of the accident?

A. The first couple miles one way or the other was partially flaked out or blowed out or worn out, but the last mile was almost completely covered.

Q. And what was it covered with?

A. Packed snow.

Q. Any ice? A. There must have been.

Q. Did you later on drive south of the scene of the accident? A. Yes, sir.

Q. Did you observe any substantial difference between the nature of the road north of the scene of the accident and the road south of the scene of the accident? [273] A. No, sir.

Q. And when you say that you are referring to that last mile? A. Yes, that last mile.

Q. Now when you got the, to the scene of the accident, who was with you?

A. A fellow by the name of Clifford Yost.

Q. Do you know where he is now?

A. I don't know his address, but he is in Maine.

Q. And did you stop at the scene of the accident?

A. Yes, sir.

Q. Can you arrive at an estimate of what time you arrived at the scene of the accident?

A. No, sir, I can't.

(Testimony of George F. Honeycutt.)

Q. Where were you located when you first knew there was an accident?

A. I believe we saw the smoke shortly after we turned on to the highway.

Q. The smoke, you don't remember seeing the smoke just as you turned on? A. No, sir.

Q. It was sometime after you came out to Highway 20 you saw smoke? A. Shortly.

Q. And did you immediately proceed south then to the scene of the accident?

A. Not too fast. It was kind of a slow process.

Q. And when you reached the scene of the accident, where did you turn your vehicle off? [274]

A. We left it on the road back.

Q. Back where? Can you point out on that map?

A. Well, I am not too familiar with these farm houses.

Q. That is Martin Lamb's driveway. Here is the irrigation lateral.

A. It would be along in here.

Q. So you stopped your car several hundred feet back of the scene of the accident? A. Yes.

Q. What was burning when you arrived at the scene of the accident?

A. The left-hand side of the bus; mostly at that time was the left-hand side of the truck, that is, the tires.

Q. And did you remain on the scene of the accident for some time? A. Yes, sir.

Q. Were you there before the Sheriff arrived, do you know? A. I couldn't say as to that.

(Testimony of George F. Honeycutt.)

Q. Were you there before either of the highway patrolmen, do you know?

A. I was there before one of the highway patrolmen.

Q. Do you know which one it was?

A. No, I don't, but he was driving a Ford panel.

Q. There was already a patrolman's Ford panel there when you arrived or he came after you did?

A. He came after I did.

Q. So if the other highway patrolman arrived after him, [275] you arrived before both of them?

A. Yes.

Q. But you don't know whether the Sheriff arrived on the scene?      A. No, sir.

Q. Or the Under-Sheriff?      A. No, sir.

Q. How long did you remain at the scene of the accident, do you know?

A. I remained there until they removed the bus off the road and also the trailer.

Q. Was there any indication when you arrived there that the vehicles had been moved prior to your arrival?      A. They had never been moved.

Q. They never could have been moved, did you say?      A. That is right.

Q. Why not?      A. It was the heat.

Q. Did you assist in moving those vehicles later on?      A. Yes, sir.

Q. And what did you do with reference to moving the vehicles? Did you help them in separating the tractor and the trailer?      A. Yes.

(Testimony of George F. Honeycutt.)

Q. And were you there at the time they were actually separated?      A. Yes, sir.

Q. Before you started to separate them had the fire always been too hot up to that time, is that the idea, to get near them?      A. Yes, sir.

Q. And what if anything did you observe about the brake [276] connections between the tractor and the trailer when you went to move them?

A. We did not unhook any air connection to the trailer.

Q. And where were the air hoses that would ordinarily connect the tractor and the trailer?

A. On what I would call the possum belly.

Q. Where was that?

A. In front of the fifth wheel.

The Court: We will take a recess of five or ten minutes.

(4:55 p.m.)

(Court resumed at 5:00 o'clock p.m., at which time all counsel and plaintiff were present.)

### Direct Examination

(Continued)

By Mr. Lush:

Q. I think when we adjourned for a few minutes you had just testified that the airbrake connections were in a box near the fifth wheel that you referred to as the possum belly, is that right?

A. That is right.

Q. Was there anything on top of that brake air hoses?      A. Yes, there was a log chain.



(Testimony of George F. Honeycutt.)

Q. Was it possible for anybody to have been up in that area from the time you arrived at the scene of the accident [277] until you saw those airbrake hoses there? A. No.

Mr. Lush: You may cross-examine.

### Cross-Examination

By Mr. Jameson:

Q. Mr. Honeycutt, as I understand it, you brought your truck to a stop some distance north of the scene of the accident; can you tell us about how far that would be from the scene of the accident? A. No, sir, I can't.

Q. Well now did you indicate on the map?

A. I believe I did.

Q. Now with reference particularly to this irrigation lateral now will you mark with the letter "E" on there approximately where you stopped? Now you have marked that the point some distance north of the irrigation lateral? A. Yes, sir.

Q. Now assuming, Mr. Honeycutt, that the irrigation lateral was 425 feet north of the scene of the accident and bearing in mind that the scale of this plat is 1 inch to 100 feet, can you tell us approximately how far from the scene of the accident you were when you brought your truck to a stop?

A. It would be approximately 2 to 300 feet.

Q. Two to three hundred feet north of it?

A. Of this. [278]

Q. Lateral? A. Yes, sir.

(Testimony of George F. Honeycutt.)

Q. Then that would be between six and seven hundred feet north of the scene of the accident?

A. I would judge that, yes. There is another approach there.

Q. And then I assume you walked from that point, did you, down to the scene of the accident?

A. I wouldn't say walked.

Q. What would you say? A. We run.

Q. You ran down? A. Yes.

Q. Now as I understand it you were driving a one-half ton truck and you came on to this highway about 3 miles north of the scene of the accident?

A. Yes, sir.

Q. And for the first two miles there was spotted snow, part of the highway clear and part with snow on it, is that correct? A. That is correct.

Q. And then for the last mile you say it was covered with snow? A. Yes, sir.

Q. Now what speed were you driving as you traveled that three miles?

A. Well, if there isn't any Pure Oil men in the house.

Q. We will guarantee that.

A. We were getting paid by the hour.

Q. You what?

A. We got paid by the hour and we drove [279] slow.

Q. You drove slowly because you were paid by the hour, is that correct? A. Yes.

Q. And about what speed were you driving?

A. Oh, I don't recall, probably 35 miles an hour.

(Testimony of George F. Honeycutt.)

Q. Probably 35 miles an hour?

A. Approximately.

Q. And you were taking that slow speed because of the fact you were paid by the hour, is that correct?

A. That is correct.

Q. Did you have any difficulty during that three miles you traveled as far as the highway was concerned?

A. No, sir.

Q. Did you run on to any ice? A. Yes, sir.

Q. Did you slide any on the ice?

A. No, sir.

Q. Where did you find that?

A. A mile north of the accident.

Q. Now was it all ice from there on in, or spotted or what?

A. I believe, I know it was covered with snow, with packed snow.

Q. With what? A. With packed snow.

Q. It was packed snow? A. Yes.

Q. You couldn't see any ice?

A. I didn't look for it.

Q. Then you brought your truck to a stop back there some six or seven hundred feet; did you say there is a driveway there? [280] Did you have any difficulty bringing your truck to a stop back there?

Q. Did you have any difficulty bringing your truck to a stop back there?

A. None that I recall.

Q. I believe you mentioned that one of the highway patrolmen arrived after you reached the scene of the accident?

A. Yes, sir.

Q. From which direction did he come?

(Testimony of George F. Honeycutt.)

A. I don't know, sir.

Q. Well, you have recalled he drove a panel truck, is that what you said?      A. Yes, sir.

Q. Where was that truck parked, if you recall?

A. He was on the other side of the bridge, backing up to the bridge, possibly to put bodies in; I don't know what it was.

Q. Do you know Mr. Ward, the Highway Inspector?      A. Yes, sir.

Q. Now can you state whether he was there when you arrived?      A. No, sir.

Q. You think one of them may have been and the other came after you arrived?

A. That is possible.

Q. You couldn't be sure of that?

A. No, sir.

Q. And I believe you said you didn't know whether the Sheriff was there at that time?

A. That is right.

Mr. Jameson: That is all.

Mr. Lush: That is all. [281]

## FRED J. WICKAM

was called as a witness for plaintiff, and having been first duly sworn, testified as follows:

### Direct Examination

By Mr. Lush:

The Court: Is this a long witness?

Mr. Lush: No, your Honor.

The Court: How many more have you got?

(Testimony of Fred J. Wickam.)

Mr. Lush: Your Honor, I have I think three very brief witnesses and one that may take some time. I would guess an hour.

The Court: Very well, we will hear this witness.

Q. (By Mr. Lush): Will you state your full name, please? A. Fred J. Wickam.

Q. What is your occupation, Mr. Wickam?

A. Highway Patrolman.

Q. For what State? A. Wyoming.

Q. And did you investigate an accident that happened about 9 miles north of Worland on December 27th, 1946?

A. Yes, sir. I assisted in the investigation of it, your Honor.

Q. You came up from Thermopolis, I believe?

A. Yes, sir, I came from Shoshone that day.

Q. And you got the report of the accident at Thermopolis? [282]

A. About five miles south of Thermopolis.

Q. And you immediately came to the scene of the accident?

A. Yes, sir. I stopped in a house just a second and left immediately for the scene.

Q. And do you know what time you arrived at the scene of the accident?

A. Approximately a quarter to five.

Q. And do you know whether or not Keith Ward had arrived at the accident before that time?

A. He had.

Q. He was already there and you made an investigation of that accident in cooperation with



(Testimony of Fred J. Wickam.)

Keith Ward, Sheriff Nicola and Under-Sheriff Cooke, did you?           A. Yes.

Q. And did you incorporate the findings of yourself and the remainder of them in one joint statement?           A. In one report, yes.

Q. And do you have that report with you?

A. I have a microfilm copy of the report.

Mr. Goppert: If the court please, just a moment.

Q. (By Mr. Lush): You have a micro copy of that report?

A. Yes, a photostatic picture of the microfilm.

Q. Photostatic picture of the microfilm?

A. Yes.

The Court: What is that, a lengthy report?

Mr. Lush: It is four pages.

Mr. Goppert: Four pages. [283]

Mr. Lush: We will offer this in evidence.

The Court: Any objection to this report?

Mr. Goppert: No objection, if the court please.

The Court: Very well then, you offer it in evidence?

Mr. Lush: We offer in evidence Plaintiff's Exhibit No. 10.

(Whereupon said Plaintiff's Exhibit No. 10, being report of investigation of accident, offered and received in evidence, is a part of this record.)

Q. (By Mr. Lush): Is all the information that you have with reference to that accident or most of it incorporated in that report, Mr. Wickam?

(Testimony of Fred J. Wickam.)

A. I presume the most of it. The report here is made for the records of the State for what they require as a rule on their accident reports.

Q. And did you go north from the scene of the accident on that particular day?      A. Yes.

Q. I would say just a short ways, possibly—oh, possibly about 150, 200 feet, maybe a little bit farther.

Q. Could you see north from that place?

A. You couldn't see so very far north. If I remember right there is a little hump in the road farther north there.

Q. Have you read this report recently, Mr. Wickam?

A. Yes, sir, I have looked at it and read it. [284]

Q. And you are in agreement with all of the statements made in that report with reference to how this accident happened?

A. How it was taken?

Q. Yes.      A. Yes, sir.

Mr. Lush: You may cross-examine.

### Cross-Examination

By Mr. Goppert:

Q. When you came to the scene of the accident you found the rear end of the bus at approximately three feet west from the west part or from the west edge of the road, did you not?

A. The rear end of the bus three feet from the west edge of the road?

(Testimony of Fred J. Wickam.)

Q. Yes. A. No, sir.

Q. Or was it from the banister of the bridge?

A. From the east banister of the bridge.

Q. You mean it was north and the rear end of the bus three feet from the east banister of the bridge?

A. It was about, the side of the bus the nearest point from the banister from the east banister or north side was about three feet from the bus.

Q. And was there room to pass it, the bus on the west? A. I wouldn't say that there were.

Q. You only examined the highway north of the scene of [285] the accident for a distance of approximately 200 feet?

A. Possibly 200 feet, right around 200 feet.

Q. Did you do that in company with Mr. Nicola, the Sheriff?

A. No, sir. He was standing there at the time I looked at it and he was around the bus and he was backward and forwards.

Q. Did he sign that statement with you?

A. This statement has never been signed.

Q. Well, did he concur in it with you?

A. Yes, he was there at the time we were making this statement out.

Q. And assisted in its preparation?

A. Yes, he was in and out of there as we all were at the time the statement was made and prepared here through our assistance by Inspector Ward at the time.

Q. Mr. Ward is the one who wrote it up?

(Testimony of Fred J. Wickam.)

A. He is the one that wrote the statement up.

Q. Did you observe a track north of the scene of the accident about 150 feet in length that circled from the west side to the east side of the highway? It didn't circle, it swerved?

A. It swerved, yes.

Q. Just where it swerved? A. I did.

Q. Quite a gradual curve, wasn't it?

A. Well, yes, it would be quite a gradual [286] curve.

Q. Now you had driven as I understand it from a point five miles south of Thermopolis to the scene of the accident after learning of the accident?

A. Yes.

Q. What speed did you take?

A. I drove pretty fast, probably between 60 and 75, even up to possibly 80 miles an hour at points between Thermopolis to just south of Worland.

Q. What did you find when you got to Worland?

A. I found ice.

Q. And did that continue, that ice just south of Worland to the scene of the accident?

A. Yes.

Q. Was that solid ice from Worland to the scene of the accident?

A. Well, I would call it solid ice across the road.

Q. And you didn't check up north of it, did you?

A. Not any farther.

Q. You did check up by talking with Mr. Keith Ward? A. Yes.

(Testimony of Fred J. Wickam.)

Q. And you found out from him there was no ice north of that little raise?

A. He stated that.

Mr. Lush: I object, hearsay, your Honor.

The Court: Yes.

Q. There was ice for a distance of 150 or 200 feet as far north as you looked north of the accident?

A. Yes, as I say as I walked there as far as I could see [287] north of the accident, ice and snow.

Q. And is it a fact or isn't it a fact that you were present when a conversation was had with Mr. Brownell that evening that is reported in that report?

A. It is a fact.

Q. You were present?

A. Yes, sir.

Q. Didn't Mr. Brownell make the statement that he was trying to slow down because he didn't want to meet the truck on the bridge?

A. Yes.

Q. He made that statement, didn't he?

A. Yes.

Q. And that was made at the Worland hospital?

A. Yes.

Q. That evening?

A. Yes.

Q. Around about 8:00 o'clock, was it not?

A. I don't know the time, possibly around eight; it might have been just a little later.

Q. And isn't it a fact that you had a talk with Mr. Hawkins, the driver of the defendant's truck, that same evening and that he told you he tried to stop in order to prevent passing the bus on the bridge, is that right?

A. Yes.



(Testimony of Fred J. Wickam.)

Q. About how fast could you drive going to the scene of the accident from Worland?

A. All the faster I did drive was approximately 30 miles an hour.

Q. And was it not a fact you were going just as fast as [288] you thought it was reasonably safe to go?

A. For me, yes.

Mr. Goppert: That is all.

The Court: We will suspend here and adjourn until tomorrow morning at 10:00 o'clock.

(5:30 p.m.)

(Court resumed, pursuant to adjournment, at 10:00 o'clock a.m. on May 18, 1949, at which time all counsel and plaintiff were present.)

The Court: Gentlemen, proceed with the case on trial.

Mr. Lush: It has been stipulated by and between the parties through their respective attorneys that the life expectancy of a man 35 years of age according to the American Experience Table of Mortality is 31 and 78/100ths years.

Mr. Goppert: That is agreed to.

The Court: Very well. [289]

\* \* \*

ELDON COOKE

was called as a witness for plaintiff, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lush:

Q. Will you state your full name, please?

A. Eldon Cooke?

Q. And what is your address?

A. Worland, Wyoming at this time.

Q. And you have listened to the testimony with reference to this accident here? A. Yes.

Q. At the time of the accident what was your occupation?

A. I was Under-Sheriff of Washakie County.

Q. And as Under-Sheriff of Washakie County, did you go north to the scene of this accident?

A. Yes.

Q. Can you tell us about what time you went north?

A. Well, I arrived at the scene of the accident sometime around about 3:00.

Q. And did you just precede the Sheriff out there? A. Precede?

Q. Yes. A. Yes.

Q. And about how fast did you drive going to the scene of the accident?

A. Well, I drove from speeds varying from 35 to 50 miles an hour. [290]

Q. And did you have any trouble keeping your car under control doing that?

A. I believe my car was under control.

(Testimony of Eldon Cooke.)

Q. Did you examine the scene of the accident with the Sheriff? A. Some, yes.

Q. And did you observe the tracks of the truck going north to the Martin Lamb driveway, or the bus I mean, or the truck going from Martin Lamb's driveway down to the point of the impact, did you observe those tracks? A. I did.

Q. Is that a fair approximation of the tracks you saw going south from about Martin Lamb's driveway to the scene of the accident?

A. Yes.

Q. Did you stay at the scene of the accident, Mr. Cooke? A. Until about five o'clock.

Q. And can you state whether or not Patrolman Fred Wickam had arrived when you left the scene of the accident? A. Yes, I believe he had.

Q. Where did you go from the scene of the accident?

A. I returned to Worland to my home.

Q. Then did you again return to the scene of the accident? A. Yes.

Q. And what did you find the condition of the road to be back to the scene of the accident on your second trip as compared with what it was on your first trip?

A. Well, the road, it was much slicker, the snow had become [291] packed. It was actually rougher and it was colder, probably had frozen harder and I couldn't drive nearly as fast.

Q. On your second trip? A. Yes.

(Testimony of Eldon Cooke.)

Q. Did you trace the tracks of the bus from the scene of the accident?

A. Up to the scene of the accident.

Q. Or back south from the scene of the accident?

A. Yes.

Q. And did you observe the same thing the Sheriff did with reference to those tracks?

A. Well, at this time the only thing I could remember would be the right track of a dual track leading up to the bridge.

Q. And did you observe that dual track over on the shoulder of the road, is that right?

A. Well, it was either near the shoulder or on the oil edge. I didn't dig it up to see where it was at the time; I don't remember but I know it was at the very right edge of the highway.

Q. And how far north of the scene of the accident did you go?

A. To the Martin Lamb driveway.

Q. You didn't go any farther north then?

A. No.

Q. And how far north from that could you see the road?

A. Well, at the time I went to the Martin Lamb driveway [292] I was going to the Lamb house to see if there was anyone injured there and I don't remember looking in that direction.

Mr. Lush: That is all.

Mr. Goppert: No cross-examination.

## GEORGE F. SINN

was called as a witness for plaintiff, and having been first duly sworn, testified as follows:

## Direct Examination

By Mr. Lush:

Q. Will you state your full name, please?

A. George F. Sinn.

Q. Where do you live, Mr. Sinn?

A. About 10 miles north of Worland.

Q. What is your occupation?

A. Farmer-Stockman.

Q. You have heard the testimony with reference to this accident and know the accident to which we refer, do you not?      A. I do.

Q. When did you come upon the scene of the accident on that day?

A. Very shortly after it happened. I think I drove up the first vehicle driven to the accident after that.

Q. That is, the first vehicle from the north?

A. Yes.

Q. And did you observe the tracks and conditions and [293] positions of the vehicle and so forth and so on around that place?      A. I did.

Q. About where did you stop your car, do you remember?

A. Well, I stopped my car north of the culvert. There is a crossing there into the field and the car was turned around there and the boys went back home after the fire extinguisher.



(Testimony of George F. Sinn.)

Q. And did you observe the tracks that had been made by the truck coming down from the north?

A. I did. I walked down those tracks to the accident.

Q. Calling your attention to Defendant's Exhibit No. 5, is that a fair representation of the marks that you saw on the road at the time when you walked down the road to the scene of the accident?

A. Yes, to some extent. There had been considerable travel since the accident and the time this picture was taken and also the wind apparently has blown snow into these tracks.

Q. In other words, the tracks are not as clear on that picture as you observed them, are they?

A. They are not.

Q. There is more snow in the tracks themselves in that picture than you observed then?

A. Yes, sir.

Q. Now, you say you followed those tracks down to the scene of the accident, did you follow; did you determine what tires or what wheels apparently made those marks by following them right up to the wheels?

A. I did. [294]

Q. And what wheels did you follow those tracks to?

A. The tractor wheels were doing the snow plowing.

Q. And did you observe marks of the trailer wheels?

A. I did.

Q. And where did those trailer wheel marks go

(Testimony of George F. Sinn.)

with reference to the tractor mark wheels that you have identified on there?

A. As I remember the trailer marks swung slightly to the east when the tractor brakes were set and followed slightly east most of the way down to where the tractor was off of the shoulder at that point nearly lined up pretty well with the tractor tracks off the shoulder of the road.

Q. Could you tell from examination of anything about the movement of the wheels of the tractor, or the trailer other than its direction from the appearance of the tracks?

A. Well, I would say they were rolling. They did not cut the snow and ice off the highway.

Q. Did the tractor wheels cut the snow and ice off the highway?      A. They did.

Q. To a greater extent than is shown in Defendant's Exhibit 5?

A. Yes, sir. They were plumb black at that time.

Q. Did you examine the tires or notice the tires on the tractor and on the trailer when you arrived at the scene of the accident and looked at the vehicles?

A. I just looked at them as I went by. [295]

Q. Did the tires all appear to be in good condition?      A. I think they were, yes.

Q. There were no obvious blowouts, were there?

A. No.

Q. Did you follow the tracks of the bus back south of the scene of the accident?      A. I did.

Q. And how far back did you follow them?

(Testimony of George F. Sinn.)

A. To the Piel driveway, and from there I looked farther south, didn't follow them, just looked.

Q. You didn't follow them beyond that point and did you observe the tracks of the bus on the bridge or was the snow melted off the bridge when you arrived there?

A. No, when I was there the snow hadn't melted off yet.

Q. And were you able to follow those tracks?

A. Right up to the bus.

Q. And did you examine the area for tracks between the bus and the tractor?

A. Oh, I just looked at them.

Q. Did you see any tire marks between the bus and the tractor?

A. Between the bus and the tractor?

Q. Yes. Did the tractor marks show any farther south than the ultimate position where the tractor came to rest?

A. Oh, just slightly beyond, yes.

Q. About how far would you estimate?

A. In the neighborhood of a couple feet, maybe, maybe not quite that far. [296]

Q. And it appeared to you that sometime during the course of the movement of the tractor the rear wheels had gone two feet farther south than the ultimate resting place of the tractor, is that right?

A. Yes.

Q. And those skid marks you testified to con-

(Testimony of George F. Sinn.)

tinued right on under the tractor and two feet past it?      A. Yes, sir.

Q. Now from how far north did you approach the scene of the accident?

A. Little better than half a mile.

Q. And what was the condition of the road along that half mile with reference to ice and snow?

A. There was ice on the road and it had snowed on top of the ice.

Q. And did you observe any difference between the condition of the surface of the road in this half mile there and the—that you drove your car—and the road over which you walked down to the scene of the accident?      A. No, I didn't.

Q. Yesterday I believe Martin Lamb testified to the effect that there was a string of farm machinery from a point near Sam Piel's driveway down to the, down the fence line; did you observe that line of machinery down there?      A. Yes, I did.

Q. How long did you remain at the scene of the accident?

A. Oh, probably five, a little after.

Q. And while you were at the scene of the accident was [297] any attempt made to move the tractor away from the trailer?

A. Yes. We tried to pull it away first with a light farm tractor but the wheels were still on the tractor and we waited then until the truck came out and moved it.

Q. And were you present when the truck moved it?      A. I was.

(Testimony of George F. Sinn.)

Q. Did you observe whether or not the wheels on the tractor were locked or on the trailer were locked when an attempt was made to move the trailer?

A. No, I wouldn't be able to determine.

Q. What was the position of the bus tracks with reference to the east rail of the bridge crossing the bridge, that is, the right hand side going north?

A. They were close. The bus was very close to the rail. They were on the east side of the road.

Mr. Lush: You may cross-examine.

### Cross-Examination

By Mr. Goppert:

Q. Mr. Sinn, you recall having testified at the taking of a deposition in other cases concerning this same accident?

A. I do.

Q. At Worland, Wyoming, in December of 1947, do you not?

A. Yes, sir. [298]

Q. And you recall testifying in a case in this court last week?

A. Yes, sir.

Q. And at any one of those times did you testify to two sets of tracks, did you?

A. I don't believe I was asked that question.

Mr. Lush: Just a second. Will you show the witness the deposition if you are going to cross-examine him with reference to it? I think he is entitled to have the deposition in front of him.

The Court: Well, these are just preliminary questions. I expect he will show the deposition to the witness before he interrogates.



(Testimony of George F. Sinn.)

Mr. Goppert: If the court please, I won't be able to show the witness the transcript of the evidence given here last week but I will show him the deposition but I want to get down and see if we were in dispute on any point first.

The Court: Very well.

Q. (By Mr. Goppert): As I understand your present evidence it is to the effect that you were the driver of the first vehicle that came from the north to the scene of the accident following the accident?

A. Yes, sir.

Q. And that you stopped the car that you were driving north of the culvert? A. Yes, sir.

Q. That crosses the highway north of the Lamb driveway? A. Yes. [299]

Q. And that when you were shown Defendant's Exhibit 5 you say that is a fair representation of the tracks as you saw them there on that road excepting that it is dimmer?

A. The tracks have been filled some here.

Q. How, from blowing snow? A. Yes.

Q. And possibly some travel over them?

A. Could be, yes.

Q. You wouldn't say there had been travel over them?

A. I would say there had been travel over them.

Q. You would say? A. Yes.

Q. As you read that picture, that No. 5, you see evidence of two almost parallel tracks describing an arc almost diagonally across the highway, do you not? A. Yes.

(Testimony of George F. Sinn.)

Q. And as you saw them on the day in question you observed their approximate length, did you not? A. No, I didn't.

Q. You observed where those tracks went to, did you not? A. Yes.

Q. As I understand your evidence now you did—were there any other tracks on the highway coming from the semi-trailer other than the two which you say are a fair representation of the tracks as you saw them?

A. Yes, there were other tracks.

Q. Coming from this vehicle?

A. I think they were, yes. [300]

Q. And do they show on that exhibit anywhere?

A. No, they don't.

Q. Handing you at this time a picture that was used in the deposition at Worland, No. 14.

Mr. Goppert: We would ask that this be marked as Defendant's Exhibit No. 11.

Q. You recall, do you not, having had exhibited to you at the time of your evidence taken or given at Worland in December, 1947, this picture which is now marked Defendant's Exhibit No. 11?

A. I do.

Q. And handing you another picture which was marked in the taking of the depositions at Worland as No. 16, and now bears Defendant's Exhibit No. 12, do you recall having been shown that picture in the taking of your deposition in Worland?

A. Well, now, I am not sure. I seen some of

(Testimony of George F. Sinn.)

those pictures. That picture looks very near like the last one you showed me.

Q. Yes, they are quite a lot alike.

A. I don't know whether I seen both of those pictures or just one.

Q. Perhaps your memory can be refreshed by reading the deposition. Directing your attention to page 3 of the deposition, of the transcript of the testimony you gave at Worland in December of 1947, I wish you would read with me the portion [301] that has to do with the tracks, and at the same time watch those exhibits when they are referred to in your deposition so that you can have your mind refreshed on it and see if this is correct. Do you know the place that was mentioned by one of the witnesses here that there is a culvert under the highway north of the Martin Lamb house? Answer: I do.

Q. With reference to that point where did you notice the markings on the roadway? Answer: Well, it could have been just a short distance south but right close to that culvert.

Q. You describe the marks from that point leading to the point of the accident? Answer: Where the tires were the snow and ice was all cut off and the road was black right here from the west to the east and then apparently straightened out and then swung over into the barrow pit. You recall all that evidence, don't you? A. Yes.

Q. Then the next question: Into the barrow pit on which side of the road? Answer: East side.

(Testimony of George F. Sinn.)

A. Yes, sir.

Q. And then the next question was: I call your attention to Plaintiff's proposed Exhibit No. 14—now that is this one that is now marked Defendant's Exhibit 11—and P.D. No. 16, that is this other one that is marked No. 12. Now, showing you Plaintiff's proposed Exhibit No. 14—directing your attention to Defendant's No. 11—I will ask you whether [302] or not you recognize that picture? Answer: I do.

Q. You so testified at that time, didn't you?

A. Yes, sir.

Q. And the next question was: And do you recognize upon that picture the marks or any marks you say you saw on that occasion? Answer: I can see the marks of a trailer there. That is, on this No. 11.

Q. And the next question was: Can you indicate those to me, please? Your answer was: I would say that was the trailer. You pointed to the set of tracks at that time and will you point to the set of tracks that you said was the trailer tracks at that time? Will you mark that with your initials, please? They have already got S.D. on them in two places. You scratch the SD or put your initials under the SD that you indicate is the trailer track.

Q. Now you have marked the trailer tracks as GS, have you not?

A. That is right. Now this track 2 I think was made by the truck tractor.

Q. Now which track?

A. The one that I marked.

(Testimony of George F. Sinn.)

Q. You believe that is a combination track?

A. I believe that is a combination track, yes, sir.

Q. Of both the truck and the trailer?

A. Of the left side of the truck and the right side [303] of the trailer at this point.

Q. And then that track would be the same as the one that is marked (1) on this Plaintiff's Exhibit 5, would it not?      A. Yes.

Q. Now then your best evidence is or your best recollection now is after exhibiting, I mean after examining Defendant's Exhibit No. 5 and Defendant's proposed Exhibit 11, is that the (1) mark on No. 5 and this one that you have just marked GS on No. 11 are the same track and that they are the combination track of the trailer and the truck?

A. At this point where I marked. Not back here on this picture.

Q. They got into the same track?

A. At this point, yes.

Q. Closely.      A. Closely.

Q. Down in toward the vehicles that was a combination track?      A. Yes.

Mr. Goppert: If you want him to, we can have him mark it on the big one. Possibly we had better not confuse him right now but before we get through we will have him mark that one.

The Court: As an enlargement of this exhibit; as an enlargement of that same exhibit.

Mr. Goppert: If we might deviate enough to do



(Testimony of George F. Sinn.)

that right now on my regular examination [304] here.

Q. (By Mr. Goppert): Handing you a photograph which is marked Defendant's Exhibit 13, I am advised is an enlargement of this Defendant's Exhibit No. 11, do you recognize that to be an enlargement of No. 11? A. This one isn't.

Q. I want to correct my statement there. I am informed this is an enlargement of the old P.D. 16. Do you recognize that as the enlargement of the P.D. 16 that was in the deposition at Worland?

A. What have they got here?

Q. Oh, just a spot?

A. Well, it could be the same picture as far as I know.

Mr. Goppert: I would be willing to stipulate it was the same with counsel. He was worried about that spot.

Mr. Lush: I will stipulate.

Mr. Goppert: We will offer in evidence at this time Defendant's Exhibit 13 and stipulate that it is an enlargement of No. 16 that appeared in the Worland deposition.

The Court: Very well, let the record show.

(Whereupon said Defendant's Exhibit No. 13, being a photograph, offered and received in evidence, is a part of this record.)

Q. (By Mr. Goppert): Handing you Defendant's proposed Exhibit 14, which I am advised is an enlargement of Defendant's proposed [305] Ex-

(Testimony of George F. Sinn.)

hibit No. 11, which showed the number P.D. 14 in the Worland exhibit, will you state if you recognize that to be an enlargement of the P.D. 14?

A. Yes, I believe it is.

Q. Now that has on it two marks "SD," do you recognize those markings as showing the two tracks that appear on Defendant's 5?

A. I believe they are.

Q. Will you mark the one that you identified at Worland as being the trailer track on that proposed Exhibit No. 14?

A. I am going to mark both sides of this, I believe.

Q. You believe both of them are trailer tracks?

A. This one and this one.

Q. And will you make that same mark on No. 11? When you testified at Worland you indicated only the two tracks that are marked SD, did you not, on this No. 14; I mean on this PD No. 14, which is now numbered 11?

A. What was that question?

Q. When you indicated those trailer tracks on that exhibit which was marked PD 14 at Worland, you marked, you indicated the two that had been marked SD, did you not?

A. Those are the tractor marks.

Q. That is what you say now but didn't you testify, when you were testifying here you pointed them out and you pointed out the two tracks that had already been marked SD?

A. No, not as the trailer marks; that trailer

(Testimony of George F. Sinn.)

couldn't possibly get from these two lines over here without leaving [306] some sign of it.

Q. There was no sign there?

A. No, not from that point.

Q. Now you are sure that this one you have just marked on the left hand corner of Exhibit 11 and on the lower left hand corner of 14 is the marks you pointed out at Worland as being the trailer marks?

A. If I pointed them out at all those are the tracks.

Q. You were asked these other two questions here in this same place. The answer you have given to the previous question about seeing trailer marks: I can see the marks of the trailer there.

A. Yes.

Q. And the next question was: Will you indicate those to me please? And your answer: I would say that was the trailer. Q. Do you see any other marks? A. Yes, you could see a mark here. And the question was: When you say "here," is that to the right of the marks behind the trailer? And your answer was: It is.

Q. And wasn't that the one that you indicated by one to the right? A. Absolutely.

Q. Well, you didn't indicate any other marks at that time, did you? You didn't indicate this one over in the lower left hand corner of the exhibit at that time?

A. I don't remember whether I did or whether I didn't. [307]

(Testimony of George F. Sinn.)

Q. You were asked on cross-examination by attorney Rice for the Burlington in that same deposition this question: If I correctly understand these pictures, P.D. 16 and P.D. 14—that is these same two we are talking about—that is correct—right after the accident the trailer and tractor truck is occupying almost the entire highway? Your answer: No, the trailer is off in the barrow pit and the tractor is occupying about half the highway?

A. Yes, sir.

Q. The mark that leads to the rear of the trailer wheels in these pictures P.D. 16—and then he says P.D. 17 and he must be wrong on that because there isn't any P.D. 17. A. I can't see any.

Q. He must have referred to 14 and 16. Where is that with reference to the east side of the highway? Answer: It is off the highway. Is that right? Was that your answer? A. That is right.

Q. How far off? Answer: Possibly three feet, maybe more.

Q. And then the next question? The mark extending toward us in the picture from the rear wheels of the trailer is three or more feet east of the side of the highway? He refers to it as a mark?

A. Yes.

Q. Answer: Off the oil mat. [308]

A. Yes.

Q. Then the next question was that the other mark, I believe you said that to be the mark of a tractor wheel here. Is that out next to the oil mat of the highway? And your answer was: I would

(Testimony of George F. Sinn.)

say it was very close to the edge of the picture.

Q. Which edge? A. East edge.

Mr. Lush: I would say it is very close to the edge from the picture.

A. That is right.

Q. And which edge? A. East edge.

Q. The right hand side going north? Answer: Yes.

Q. Is that right?

A. That should be the right hand side going south, shouldn't it?

Q. If you read it carefully, I think.

A. What mark is that supposed to be; what mark are we talking about?

Q. That is the one to the right hand side of the two lines that were marked at Worland, S. D.?

A. Yes.

Q. Then he goes on and asks you this question: Speaking of the tractor we didn't make that plain. Let's take the rear end of the tractor as shown by the pictures P.D. 14 and 16, where is the rear end of the tractor with reference to the east side of the oilmat? Answer: It is east of the oilmat. [309]

Q. That is correct, isn't it?

A. Yes, sir.

Q. And the rest of the tractor extends up on the oilmat and toward the west side of the highway? Answer: Yes, sir.

Q. I believe that I have read you all of the references you made to tracks in your deposition given at Worland, and was there anything in that



(Testimony of George F. Sinn.)

that told about three sets of tracks or three tracks?

A. I believe there was.

Q. Would you point it out?

A. I don't remember of no three being indicated, no.

Q. There was two tracks that were marked on there S.D. on those two exhibits at that, were they not? A. They were.

Q. And don't you recall now that those were the only two testified to by you in that hearing?

A. I wouldn't say whether I mentioned them or the others.

Q. You won't say you mentioned any other except the two?

A. I can't remember whether I did or I didn't.

Q. Well, you testified here in court last week and you identified two tracks, did you not?

A. Skid tracks.

Q. Just two and now you are testifying to three, is that it?

A. Well, this other isn't a skid track, I wouldn't say.

Q. Well, it is another mark of the vehicle?

A. Yes.

Q. Up to today you have never mentioned that third [310] mark, have you?

A. Well, you sure couldn't deny that there are three lines on this picture.

Q. Well, had you ever mentioned it in your evidence given in the deposition at Worland or here in this court in this other Stotts and Foster case?

(Testimony of George F. Sinn.)

A. I don't remember whether I did or whether I didn't.

Mr. Goppert: We want to offer in evidence, if the court please, Defendant's Exhibits 11, 12, and 14.

Mr. Lush: No objection.

The Court: They may be received in evidence.

(Whereupon said Defendant's Exhibits Nos. 11, 12 and 14, being photographs, offered and received in evidence, are a part of this record.)

Q. (By Mr. Goppert): Mr. Sinn, now this third track was almost parallel to the other two?

A. It varied.

Q. It varied; you mean part of the places it was wider from the two tracks? A. Yes.

Q. Was there evidence of four tracks to the north; I mean will you add one more?

A. I don't believe I will.

Q. You say there were three and that the middle one you say was a combination of tractor and trailer track?

A. Where it came to rest, yes.

Q. The tractor tracks you say didn't cut the snow and ice [311] off the highway or was it the trailer tracks that didn't?

A. The trailer tracks didn't.

Mr. Goppert: That is all.

Mr. Lush: That is all.

The Court: We will take a few minutes recess.

(11:00.)

(Court resumed at 11:10 o'clock a.m., at which time all counsel and plaintiff were present.)

The Court: Proceed, gentlemen. [312]

\* \* \*

Mr. Goppert: Now, if the court please, on account of the convenience of the witnesses and to get several of them away promptly I want to call some of them a little out of order. Dr. Walker.

### DR. M. B. WALKER

was called as a witness for defendant, and having been first duly sworn, testified as follows:

### Direct Examination

By Mr. Goppert:

Q. State your name.

A. Dr. M. B. Walker.

Q. Where do you reside?

A. Basin, Wyoming.

Q. How long have you lived in that community?

A. Thirty years.

Q. What is your occupation?

A. Well, I am field representative for the Great Western Sugar Company.

Q. Do you hold any official position in the state of Wyoming? A. State Representative.

Q. In the State Legislature?

A. Yes, sir.

Q. And are you an officer of the town of Basin?

A. On the Town Council.

(Testimony of Dr. M. B. Walker.)

Q. Councilman?           A. Yes, sir.

Q. And did you have occasion on December 27th, 1946, to make a trip to Worland, Wyoming?

A. Yes, sir. [315]

Q. Will you state what the occasion was, how you happened to go?

A. Well, about—we had a funeral in Basin that day and when we came back from the cemetery I went to Mrs. Booker and she told me about this bus accident in which her daughter was one of the victims. My daughter was home from Great Falls at the time and she is a registered nurse and had gone to school with this Booker girl from the first grade on up, so when I went home and told her she said: "Well, put some clothes in a grip and let's go to Worland, Marian may need me." So I took she and her husband down to Worland.

Q. Was that Marian Whiston?           A. Yes.

Q. Is she the wife of Mr. Whiston who testified in this case?           A. Yes, sir.

Q. Can you place the approximate time that you left for Worland from Basin?

A. It was between four and four thirty; I would say around there sometime.

Q. What kind of car do you drive?

A. Chevrolet.

Q. Who went with you?

A. My daughter and her husband.

Q. And did you observe the condition of the highway as you drove down to the scene of the accident?           A. Yes, sir.

(Testimony of Dr. M. B. Walker.)

Q. How far approximately is it from Basin to the scene of that accident? [316]

A. Oh, it must be about 22 or 23 miles.

Q. Would you approximately locate the accident from Worland how far?

A. Well, I don't know. I think that place is around 9 or 10 miles.

Q. How would you describe the location of the accident?

A. Well, it is right by the old Chatfield place.

Q. Well, the Arthur Chatfield place, is that the one now occupied by Martin Lamb?

A. Right by the Eccles Beet Company.

Q. And that is the so-called, I think it is referred to in here as a piler, where a piler was located?

A. That is right.

Q. That was a beet piler, was it not?

A. Yes.

Q. And that, of course, is U. S. No. 20, is it not?

A. Yes, sir.

Q. Will you state the speed at which you traveled from Basin to the scene of the accident?

A. Well, I was going 75 miles or better.

Q. Did you find any bad road before you got to the scene of the accident?

A. No. No, sir, I didn't.

Q. Did you happen to pass any Highway Patrolman en route?

A. Yes, sir.

Q. Who was it if you know?



(Testimony of Dr. M. B. Walker.)

A. A fellow by the name of Ward. [317]

Q. And when you got to the scene of the accident did you find any vehicles on the highway?

A. In front of me?

Q. Yes. I mean that had been in an accident?

A. Well, yes, the truck and bus were off the side of the road ahead of me.

Q. Was there anybody flagging traffic down at that time?      A. Yes, sir.

Q. Was he the one that stopped you at the scene of the accident, the fellow that flagged you down?

A. Yes, sir.

Q. Do you recall that there was ice near the scene of the accident?

A. Well, I started to slow down, I would say, 350, 400 feet north of the accident and there was some snow and skidded a little bit before I stopped.

Q. And was there some natural objects there that you can locate the approximate place where you hit that snow?

A. There's trees on the west side of the road.

Q. Is that the road just west of the Martin Lamb residence, the old Arthur Chatfield place?

A. Yes, sir, the road runs north and south in front of the Martin Lamb residence.

Q. The road takes a north and south course there?      A. The trees are on the west.

Q. The trees are west of the roadway?

A. Yes. [318]

Q. And could you located with reference to this Plaintiff's Exhibit 1 the approximate location of

(Testimony of Dr. M. B. Walker.)

where that ice and snow started as you observed it coming down on that drive that afternoon?

A. Well, I didn't notice the road being slippery or anything until I started to slow up at the time the man was flagging me.

Q. You knew then you were on ice?

A. Well, I knew it was a little bit slippery. It's when I started to slow up.

Q. That is the only time you had any skid on the way down there that day?

A. I drove approximately 75 to 80 miles an hour all the way.

Q. And was it safe driving as you figured?

A. Yes, sir.

Q. When you came to a stop there did you observe or did someone else come up shortly after and talk to you?

A. Highway Patrolman came up.

Q. Was he behind you; was that this same Mr. Ward?

A. Yes, sir.

Q. And he told you to slow down or something of that kind?

A. Oh, he kind of bawled me out a little bit.

Q. For your speed, was it?

A. Yes, sir. [319]

Q. What is the State limit on speed in Wyoming?

A. 60 miles.

Q. You had exceeded that?

A. Yes, sir.

Q. Believing it was an emergency?

A. Well, I had a registered Red Cross Nurse

(Testimony of Dr. M. B. Walker.)

with me and I believed it was an emergency and I wanted to get her to the hospital.

Q. And did you go in the course of time to the scene of the accident to the hospital?

A. Yes. We turned to the right and went down the railroad track to get by the bridge.

Q. You couldn't go by the bridge on account of this debris of the wreck of the accident?

A. Yes, sir.

Q. Was the outfit still burning?

A. Yes, sir.

Q. Do you know where you came back to the highway south of the accident?

A. About a mile south.

Q. And at that point what was the situation with reference to that highway from there into Worland?

A. Well, there was more snow and the road was rougher.

Q. Were the roads rough?                      A. Yes.

Q. Would you say bumpy?

A. Yes, they were.

Q. What was that caused by if you noticed?

A. Well, there was more snow south of the accident where we came back on the road.

Q. Did you still continue to drive as fast as you thought [320] was safe after that?

A. I was following another car. I stayed behind them.

Q. And about what speed did you take after you had the highway from there on into Worland?

(Testimony of Dr. M. B. Walker.)

A. I would say 35 to 40.

Q. Did you skid any going at that speed?

A. No, sir.

Q. And where did you stop at Worland?

A. Hospital.

Q. Did you find out who this car was in front of you?

A. I knew who it was when we were behind it.

Q. Who was it?

A. Mr. Booker and his wife.

Q. That was the father and mother, was it not, of Mrs. Whiston?      A. Yes, sir.

Q. When did you come back from Worland to Basin?      A. About seven o'clock that night.

Q. That same night?      A. Yes, sir.

Q. At that time had the road been opened up at the scene of the accident?      A. Yes.

Q. Did you come back past the scene of the accident?      A. Yes, sir.

Q. And in driving back to Basin from Worland what did you find the condition of the highway to be from Worland to the scene of the accident?

A. Well, we drove about the same speed. The road was about the same as when we went down.

Q. You mean 35 miles an hour?

A. 35 to 40.

Q. What did you find the condition to be north of the [321] scene of the accident?

A. Well, we stopped at the accident for probably five to ten minutes and then we got in and drove on. I imagine we drove 50 to 60 and on up.

(Testimony of Dr. M. B. Walker.)

Q. You didn't have any trouble going that speed north of the accident? A. No.

Q. Did this ice condition continue down past those trees north of the accident on the road?

A. Yes, it did.

Q. Was there a definite difference in the highway as between the roadway north of the trees and the roadway south of the trees at the scene of that accident? A. Yes, there was.

Q. And did you make a trip back over the same roadway the next day?

A. I went down there about eleven o'clock.

Q. That would be on a Saturday morning, would it not? A. Yes.

Q. And what did you find the condition of the highway to be with reference to its condition the afternoon before?

A. Well, we had about five or six inches of snow in Basin that night. About four miles south of Manderson the road had quite a bit of snow on it; from there on down there was no snow.

Q. And there was no snow from four or five miles south of Manderson to the scene of the accident? [322] A. Just a skiff.

Q. And did you find the conditions the same the next morning at the scene of the accident so far as this good road and the icy road was concerned?

A. Well, we didn't drive as fast going down, I know that.

Q. Well, was the road conditions the same, that



(Testimony of Dr. M. B. Walker.)

is, did you meet the changed condition in the highway at the approximate place of those trees?

A. Just about the same.

Mr. Goppert: You may inquire.

### Cross-Examination

By Mr. Lush:

Q. Doctor, you said you started to slow down three or four hundred feet north of the scene of the accident?

A. Yes, sir, when I saw this fellow flagging.

Q. Yes. Do you know who it was that was flagging? A. No, I don't.

Q. You don't know who that was and you say that you started to slide at about the Lamb driveway, is that about right?

A. Well, I think it was a little north of there.

Q. You think it was maybe a little north of the Lamb driveway you started to slide. Where was this man flagging? [323]

A. He was standing right near the gate, right next the gate that turned in the right into that man's yard where we detoured.

Q. He was standing right next this gate. Now this is the Martin Lamb driveway on the east side?

A. I would say he was standing between the two somewheres.

Q. I see, somewhere between those two drives?

A. Yes.

Q. And he was flagging and you slowed down because you were flagged down?

(Testimony of Dr. M. B. Walker.)

A. Well, I slowed down because we were flagged down and that is about as close as you could get to the scene of the accident.

Q. And before you started to slow down because you were flagged down, how fast were you going?

A. I would say I was going 75 miles an hour.

Q. Then approaching this spot up here you were going 75 miles an hour? A. Yes.

Q. Did you lose control of your car?

A. No.

Q. Did you go off the road?

A. No, sir.

Q. Did you have any trouble keeping your car on the road? A. No, sir.

Q. Did you observe this irrigation culvert up here just north of the scene of the accident?

A. No, I didn't.

Q. That creates the high spot in the road that is indicated by this map? A. I did not. [324]

Q. You didn't observe that. How far north of the flagman did you start to slow down?

A. Well, I couldn't. I would say three or four hundred feet, maybe five hundred, I don't know. When I see him out there waving I started to slow down.

Q. Now, Doctor, was there any snow on the highway north of the scene of the accident?

A. Not that I remember.

Q. It was clear entirely from shoulder to shoulder until you got right down to the scene of the accident?

(Testimony of Dr. M. B. Walker.)

A. Well, as far as I remember. Now it was, I know it was not dangerous driving at that speed.

Q. Now do you remember that there was snow on the highway or there was not snow on the highway?

A. I don't think there was snow on the highway.

Q. You don't think there was snow on the highway?

A. I don't know.

Q. Do you know whether there was snow on the highway?

A. I wouldn't say there was or was not. I didn't notice at the time.

Q. You didn't notice at the time there was snow on the highway; did you notice there was ice on the highway?

A. Not until I got right down close.

Q. As you approached the scene of the accident from the north do you remember whether or not the road is straight [325] or it is crooked say for two miles?

A. Well, there is a curve about a mile north of the accident.

Q. About a mile north?

A. Offhand just as remembering it I would say it was about a mile north, and there is a sharp turn, corner there.

Q. About a mile north?

A. That goes northeast.

Q. And did you have any occasion to slow down

(Testimony of Dr. M. B. Walker.)

between the time you came around that sharp curve and the scene of the accident?

A. Well, between——

Q. The time you came around the curve and you started to slow down because you were being flagged down?      A. No, I didn't.

Q. Did you have any occasion to turn your car from side to side?      A. No, sir.

Q. In other words, you were driving on the highway——

A. Right in the center of the road.

Q. So you actually can't say whether the road condition was slippery there, can you, because it would be only when you put on your brake or turned side to side that you would notice the road was slippery?

A. I didn't put my brakes on until I started to stop.

Mr. Lush: That is all. [326]

### O. R. BOOKER

was called as a witness for defendant, and having been first duly sworn, testified as follows:

#### Direct Examination

By Mr. Goppert:

Q. State your name.      A. O. R. Booker.

Q. Where do you reside, Mr. Booker?

A. Basin, Wyoming.

Q. How long have you lived at Basin?

A. About 30 years, 29 years.

(Testimony of O. R. Booker.)

Q. What business are you engaged in?

A. I am Postmaster.

Q. At what place? A. Basin, Wyoming.

Q. And have you been employed in that Post Office for a considerable period of time?

A. About 14 years.

Q. Are you the father of Marian Booker Whiston? A. I am.

Q. Do you remember that she was involved in an accident on, while riding in a bus on U. S. Highway 20 between Worland and Basin?

A. I do.

Q. And can you place the time and the date?

A. I do not know the exact date. The time of day I recall taking off between three or four in the afternoon.

Q. Was it two days after Christmas, December 27, 1946? [327]

A. Yes, right after Christmas.

Q. And about what time did you get the word?

A. Oh, between three and four o'clock.

Q. And you were at the Post Office when you got it? A. I was.

Q. What did you do immediately after getting that word?

A. I dropped my work and prepared to go to Worland.

Q. How long did it take you to go or get going?

A. Twenty minutes perhaps.

Q. Who went with you? A. My wife.

Q. What kind of vehicle did you drive?



(Testimony of O. R. Booker.)

A. Chevrolet sedan.

Q. And what speed did you take?

A. Oh, we took a moderate speed. I would say 50, 60 miles an hour perhaps, not over 60.

Q. Did you observe the road conditions as you went to the scene of the accident? A. Yes.

Q. And what was the situation north of the accident from Worland to the scene of the accident, or Basin to the scene of the accident?

A. The road was clear and free of any ice or snow.

Q. And did you come up on ice or snow at the scene of the accident or somewheres near there?

A. Yes.

Q. About how far from the scene of the accident did you strike that? [328]

A. As I recall it was around 500 feet.

Q. And did you notice any natural objects near there that you could place it with reference to?

A. Trees on my right going.

Q. Did those trees on the right of the highway indicate approximately where the ice and sleet conditions started? A. As I recall it, yes.

Q. Do you know the names of land owners there adjacent to that corner?

A. I don't know any except I am familiar with the Lamb place; that is the only land owners I know.

Q. Was it just west of the Lamb residence?

A. Just across the road.

(Testimony of O. R. Booker.)

Q. And that is the Martin Lamb residence, isn't it?      A. Yes.

Q. And when you got to the scene of the accident did you stop there?

A. Just slowed up is all.

Q. What caused you to slow up if you know?

A. Well, there was confusion there at the scene of the wreck and then this flagman. The Highway Department had there a man belonging to the Highway Department personnel.

Q. Do you know where that man was located, that flagman?

A. Well, he was where I turned up to the right but I can't say definitely where it was.

Q. Was the turnoff to the right of the [329] accident?

A. He directed us down through a field.

Q. Did it go into a vacant house there, a house on the west side?

A. I remember it went through a little farm yard.

Q. Then do you remember where you came back on the highway south of it?

A. I would say possibly a mile south of the scene of the accident.

Q. And did you observe what the road condition was after you hit U. S. 20 from there on into Worland?      A. Yes.

Q. What was it?

A. It was icy and sheet ice on the highway and the road in places it made it bumpy, rough.

(Testimony of O. R. Booker.)

Q. And that condition extended clear from that place then a mile south of the accident to the town of Worland? A. It did.

Q. You, of course, went to some place in Worland, did you? A. We went to the hospital.

Q. When you arrived there did you observe anybody else come in, arrived there at the same time or approximately?

A. Dr. Walker was right behind me. I didn't know it until I got to the hospital; he and his daughter and son.

Q. What time did you come back north from Worland to Basin?

A. Oh, it was midnight or afterwards.

Q. Did you use U. S. No. 20 going back?

A. Yes, sir. [330]

Q. And at that time what was the condition of this highway from Worland to the scene of the accident? A. It was icy. Ice on it.

Q. Was it bumpy? A. Rough, bumpy.

Q. And what speed did you travel?

A. Very moderate, 35, maybe 40.

Q. Was that the speed you used going into Worland after you got back on U. S. 20 south of the scene of the accident when you went down?

A. Approximately, yes. Very moderate speed.

Q. And did you observe when you came back whether this same icy condition existed north of the scene of the accident for as I believe you said some 500 feet?

(Testimony of O. R. Booker.)

A. Well, I suppose it did. I wasn't thinking much about that. There was icy conditions.

Q. Did you drive faster north of the scene of the accident from Worland than from Worland to the scene of the accident? A. Yes.

Q. Did you observe anything in the highway that would impede your driving?

A. North of the scene of the accident?

Q. Yes.

A. No, not until we got near Manderson which is south of Basin and then there was quite a heavy snow storm. We were in a heavy snow storm that night.

Q. From Manderson south?

A. Yes. [331]

Q. That Manderson is located how far south of Basin? A. Eleven miles south.

Q. Did you observe any landmarks near the road as you drove down that afternoon that would give you the approximate location of some natural object with reference to the place where the road was good and where it became icy?

Mr. Lush: Objected to as repetitious. He testified to that a moment ago.

The Court: Yes, the trees.

Mr. Goppert: Did he testify to that?

Q. (By Mr. Goppert): Were you acquainted with the names of the people that lived there?

A. No, sir.

Q. How did you locate that corner where the accident is?

(Testimony of O. R. Booker.)

A. I would locate it by the bridge, the highway bridge.

Q. You observed that bridge before and since, have you not?           A. Yes.

Q. And did the accident happen right at that bridge across the roadway?

A. Just north of the bridge; just right on the bridge, you might say.

Q. And did you come back to Worland or drive back to Worland on the Saturday morning?

A. Yes, sir.

Q. About what time? [332]

A. Oh, we perhaps left Basin around nine o'clock.

Q. And got to Worland about what time?

A. Well, I expect it took us an hour or better, probably ten thirty.

Q. Now, with reference to the highway from your, this place five miles south of Manderson where you said you got in a snow storm the night before down to the place you indicated was 500 feet north of the scene of the accident would you state whether that road was clear of ice and snow?

A. The following morning?

Q. Yes.           A. Yes.

Q. And what was the conditions then from the place where you had gotten on the snow and ice the afternoon before?

A. Just the same as the afternoon before; it was still rough.

Q. It was still rough and icy?           A. Icy.



(Testimony of O. R. Booker.)

Q. Did that condition continue clear on into Worland that Saturday morning? A. Yes.

Mr. Goppert: That is all.

Cross-Examination

By Mr. Lush:

Q. Now, Mr. Booker, as I understand your testimony, you say that the ice and snow started at these trees here, [333] is that right? The trees opposite Martin Lamb's driveway, is that right?

A. Yes.

Q. And the highway north was clear of snow and ice? A. That is right.

Q. Now is that literally true? I mean is it literally true that this road was completely covered with snow and ice up to those trees and there was no snow north of that?

A. There was ice and snow on the road.

Q. Yes. Was there ice and snow north on the road? Was there an abrupt cut off where we have ice and snow here and we turn back and there was no ice and snow, is that literally true?

A. Yes, sir.

Mr. Lush: That is all.

W. V. DOLEZAL

was called as a witness for defendant, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Goppert:

Q. State your name.

A. W. V. Dolezal.

Q. Where do you reside?

A. Basin, Wyoming.

Q. What, if any, what is your occupation?

A. Court Reporter.

Q. Are you the Official Court Reporter of the Fifth Judicial District of Wyoming?

A. I am. [334]

Q. The District Judge is P. W. Metz?

A. That is right.

Q. And how long have you held that position?

A. A little over fifteen years.

Q. And your residence has been at Worland all that time?

A. At Basin.

Q. And that District comprises the Counties of the Big Horn Basin, does it not?

A. It does. Four.

Q. You are acquainted with U. S. No. 20?

A. I am.

Q. And also acquainted with it at the time of this accident in question?

A. I was.

Q. Did you have occasion to go to the scene of the accident from Basin and down to Worland on the morning following the accident?

A. I did.

(Testimony of W. V. Dolezal.)

Q. That was a business trip, was it?

A. It was.

Q. Would you state if you observed the condition of the highway from Basin to the scene of the accident and also from the scene of the accident to Worland on the way down that morning?

A. I did.

Q. And what was that condition?

Mr. Lush: I object, your Honor. It is too remote, the day after the scene of the accident. The nature of the road might have been substantially changed.

The Court: Well, we have testimony here that conditions were the same in the afternoon, evening, late at night and the following morning and I think it would be proper to [335] allow him to testify.

Q. Go ahead.

A. The road up to the trees there opposite the Lamb place were good; from the Lamb place on they were icy and worse from all the way into Worland.

Q. Gradually worse all the way in?

A. There was heavier ice from there on into Worland.

Q. Would you describe that surface condition of the roadway from the trees west of the Lamb place on into Worland?

A. Well, there was icy condition of the road opposite the trees and probably 450 to 500 feet north of the scene of the accident and the road was

(Testimony of W. V. Dolezal.)

choppy for a few miles right now, I mean right south of the scene of the accident.

Q. You mean by "choppy" bumpy?

A. Bumpy and icy.

Q. Would you be acquainted with the legal speed of motor vehicles in Wyoming? A. I am.

Q. 60 miles an hour? A. Yes.

Q. From what you saw of the highway that Saturday morning was that a safe speed north of the trees west of the Lamb place on U. S. No. 20?

A. North of the Lamb place, yes. I traveled from 50 to 60 miles.

Q. And south of there would that have been a safe speed?

A. No, I am sure it wasn't. I didn't feel that it was. [336]

Q. Did you slow down?

A. I did coming and going both.

Q. You went back on it the same day?

A. I think I did late that night.

Q. Was the condition still the same that Saturday night?

A. Yes, and the next Monday morning.

Q. You had occasion to travel it all those times?

A. Yes.

Q. Going from Basin to a place about five miles south of Manderson you were in snow, were you not, from Basin south on Saturday morning?

A. There might have been a little but not enough to impede travel.

Q. It wasn't frozen?

(Testimony of W. V. Dolezal.)

A. No, sir. The snow might have been frozen because the weather was very cold but the road was not icy.

Mr. Goppert: That is all.

Cross-Examination

By Mr. Lush:

Q. Now, Mr. Dolezal, is this stoppage of the snow and ice you testified to at the Lamb driveway, was that abrupt?

A. More or less abrupt that ice was.

Q. More or less abrupt? [337]

A. Just about opposite the trees.

Q. This map is made to scale?

A. Yes, sir.

Q. And it is 250 feet from the center of the drainage ditch, or the irrigation ditch, to the center of the Martin Lamb driveway. Now if we move up to the upper half and each one of these represents a half inch, and this should be a foot, we find this irrigation lateral is 425 feet north of the scene of the accident, plus or minus a few feet, and that the road tapers down somewhat from that. Now there is a space between those two of about 175 feet; would it have been possible for an individual to have walked from the Martin Lamb driveway up to that irrigation lateral at the time of that accident and not noticed the difference between those conditions?

A. I would assume that one walking would notice those conditions.

Q. And if many people walked up there and



(Testimony of W. V. Dolezal.)

testified that the conditions were the same not only so far as the irrigation lateral but as far as you could see north, do you think then you might be mistaken about your testimony?

A. I don't believe so.

Mr. Lush: That is all. [338]

Redirect Examination

By Mr. Goppert:

Q. You do know that there was a distinct good road and then you came on the bad road at approximately that tree location there west of the Lamb place? A. That is my recollection.

Mr. Goppert: That is all.

Mr. Goppert: The next witness will be longer, if the court please.

The Court: We will suspend here and take a recess until two o'clock this afternoon. (12:00 noon.)

(Court resumed at 2:00 o'clock p.m. on May 18, 1949, at which time all counsel and plaintiff were present.)

The Court: Proceed, gentlemen.

Mr. Goppert: Mr. Clinton.

## ARTHUR CLINTON

was called as a witness for defendant, and having been first duly sworn, testified as follows:

## Direct Examination

By Mr. Haughey:

Q. Will you state your name, please?

A. Arthur Clinton.

Q. Where do you live?

A. Mills, Wyoming. [339]

Q. What is your occupation?

A. Shop foreman.

Q. Are you employed at the present time?

A. No, sir.

Q. What was your last employment?

A. Fred Manning, Inc.

Q. How recently did you leave that employment?

A. One week.

Q. How long had you worked for Fred Manning, Inc.?

A. Approximately 4½ years.

Q. Were you during that period employed, during all the period employed as shop foreman?

A. No, sir.

Q. And what did you do when you first came with the company?

A. I was a mechanic.

Q. When were you promoted to shop foreman?

A. Just about three years ago.

Q. That would be in the spring of 1946?

A. Yes.

Q. Where were you working, Mr. Clinton, in the year 1946 after your promotion to shop foreman?

(Testimony of Arthur Clinton.)

A. Fred Manning Garage in Mills, Wyoming.

Q. Where is Mills, please?

A. It is right on the outskirts of Casper.

Q. Were you familiar with the purchase by the company of a West Coast Special Tractor?

A. Yes, sir.

Q. When was that—I should ask the date—was that West Coast Special involved in an accident near Worland on December 27, 1946?

A. Yes, sir. [340]

Q. Was that the only unit of the kind the company had at the time of the accident?

A. At the present time, yes.

Q. Pardon?

A. At the time of the accident, yes.

Q. When was the unit purchased?

A. I don't know the exact date. It was a new truck at the time of the accident, very few miles on it.

Q. Had it been purchased within the preceding month?

A. Yes.

Q. Did the company also acquire a trailer to use with that tractor?

A. A new one.

Q. Pardon.

A. I didn't quite understand.

Q. Did the company also purchase a trailer to go along with that tractor unit, the West Coast Special?

A. They had ordered a trailer, yes.

Q. And was the unit, or rather were the two units, the tractor and the trailer put together in the company's shop at Mills?

A. Yes, sir.

(Testimony of Arthur Clinton.)

Q. What kind of trailer was the rear unit, just a trailer or semi?

A. The one involved in the accident?

Q. Yes.

A. It was a semi trailer. I think it was a Spencer trailer.

Q. Did you have supervision of the shop work in the [341] garage in Mills? A. Yes, sir.

Q. Was the tractor and the semi-trailer inspected at the time shortly after it was acquired and purchased in the shop? A. Yes, sir.

Q. And what did that inspection consist of, Mr. Clinton?

A. We built the truck up there completely for oilfield work. We checked all lights and brakes. It had new tires on, and naturally fire extinguisher, first aid kits; it was complete.

Q. When you say you built it up what do you mean by that?

A. We installed a winch, fifth wheel.

Q. What is the fifth wheel?

A. That is a table that the trailer sets on and it is connected to the truck.

Q. Go ahead and explain any further assembly work you did there?

A. We put all the air hoses on, clearance lights, and fixed it up to go in the field and work.

Q. What kind of brakes were the tractor and the trailer equipped with? A. Airbrakes.

Q. What manufacturer made them, do you know? A. Bendix, Westinghouse.

(Testimony of Arthur Clinton.)

Q. Now handing you what has been marked as Defendant's Exhibit No. 15, which happens to be page 22 of an [342] International Harvester booklet concerning Model W 4064 L, I will ask you whether the diagram at the top of the page is a fair indication of a side view of that West Coast Special truck? Now before you answer I might add that I don't want you to say with respect to specific length of the different parts but if as a general over-all picture does that fairly represent the West Coast Special unit as it was when you purchased it?

A. Yes, sir.

Q. And I wonder if you would draw on the diagram the winch showing its position on the truck together with whatever other equipment you can recall was installed by your shop there at Mills?

A. You want a diagram of the winch?

Q. Yes, just a side view of the equipment that was installed on the truck?

A. Right in here would be approximately the center of the winch.

Q. Now the winch is the circle you have drawn right through the dotted line marked "CA"?

A. This winch sets on an inch and a quarter what we call a bed plate extending up this way, a post.

Q. That post is right to the immediate rear of the back of the cab?

A. Yes, sir. There is also a short post here, and bars go up there.



(Testimony of Arthur Clinton.)

Q. These are back of the winch? Is it the short post [343] you refer to?

A. The short post is behind the winch.

Q. And then you make a diagonal line from the top of that short post to the longer post, what does that indicate?

A. That is a brace in case your truck tips over or anything it don't bend it up. These posts are made out of 3½ inch heavy pipe.

Q. Now there was some testimony about a possum belly, possum box, draw its position on the truck?

A. This possum belly as they call it is right behind the winch and sets right in between the frame, and that is where they carry the chains and any little stuff that you might have.

Q. Now can you show on that diagram the air hose lines, that is, lines from here to the trailer?

A. Well your pipe air lines come back along the frame.

Q. Inside the frame?

A. And we connect on to them. We have to run some new pipe in there, of course, from your foot pedal and from your hand control valve and go right up this post with pipe.

Q. Right up the post immediately to the rear of the cab?

A. Yes, sir, and there is another brace here.

Q. Above the winch?

A. Yes, and on this brace there's two gladhands, post connections. [344]

(Testimony of Arthur Clinton.)

Q. Is that a connection from the pipe to a hose?

A. Yes, sir.

Q. Can you describe what that gladhand is?

A. It is a quick coupling air line connector.

Q. And then to the rear of the gladhand—pardon me—is that gladhand similar to the connection for the air lines on pullman cars used by the pullman cars?

A. Yes, sir.

Q. And then where do the hoses run from that gladhand which is above the winch?

A. They run from there back to the front of the trailer. There's also some gladhands on the front of the trailer.

Q. So that the hose between the truck and the trailer can be disconnected at either the trailer end or truck end near the winch?

A. Yes, sir.

Q. What kind of hose is the air hose?

A. It is high pressure Bendix-Westinghouse air hose.

Q. Will you re-draw that line showing the air hose a little distincter please and then mark air hose along side it?

Mr. Haughey: We offer in evidence Defendant's Exhibit No. 15.

The Court: Have you shown this to counsel?

Mr. Haughey: I thought he saw me draw it.

Q. Are there one or two hoses leading from the gladhands in front to the gladhands in back?

A. Two. [345]

Mr. Lush: It is understood this is not dimensionally correct?

(Testimony of Arthur Clinton.)

Mr. Goppert: That is right.

Mr. Lush: No objection.

The Court: It may be received.

(Whereupon said Defendant's Exhibit No. 15, offered and received in evidence, is part of this record.)

Q. (By Mr. Haughey): When was that truck and trailer unit, when was the assembly completed and the truck sent out on the road?

A. Approximately one week before it was sent out on the road.

Q. Had you examined it yourself to make sure that it was or was not in satisfactory condition?

A. Yes, sir.

Q. And what can you say with respect to the condition of the vehicle, the truck and trailer at that time?

A. It was in good condition.

Q. Specifically with respect to the brakes?

A. Yes, sir.

Q. Did you have occasion to travel on U. S. Highway No. 20 between Basin and Worland, Wyoming, on the day that the accident occurred, the accident on December 27th, 1946?

A. Yes, sir.

Q. And what was the occasion for your traveling down [346] that road that day?

A. I was going from Powell, Wyoming, to Casper.

Q. What time of day did you leave Powell?

A. Approximately four-thirty in the morning.

(Testimony of Arthur Clinton.)

Q. And did you stop to eat along the way anywhere?      A. No, sir.

Q. When did you leave Basin, do you have any recollection?

A. I don't recall when I left Basin. I left Lovell at five o'clock.

Q. Can you describe the road conditions between Lovell and Worland, Wyoming, that morning?

A. When we left Lovell it was dry and as we proceeded towards Worland we run into fine mist of rain and it kept getting heavier all the time. We used windshield wipers. The road was wet I believe when we left Basin.

Q. As you proceeded south from Basin to begin with you say the road was wet, did the condition of the road change any between that point and Worland?      A. Yes, sir.

Q. And tell what kind of change took place?

A. Well as we proceeded south of Manderson I think you come through some foothills and it was dark and I know we were going down the road and all of a sudden we come on some icy roads.

Q. Could you tell any difference from the appearance [347] of the road before you run on to the icy road?      A. No, sir.

Q. Did you have any trouble controlling your vehicle at the time you struck the ice?

A. Yes, it was very slick. We had to slow down and proceeding into Worland there was ice nearly through or about all the way through the Windy River Canyon.

(Testimony of Arthur Clinton.)

Q. Can you locate the place where the change in the highway condition occurred at, that is, where you ran on to the ice?

A. Not exactly. It was somewhere after we left those foothills and started across the little valley towards Worland. It's near where that big flame was burning to the right of the road there headed up towards Worland.

Q. And what was that big flame; do you know what was the cause of it?

A. I believe it was a burning gas well or burning torch.

Q. Was that the Pure Oil well that was on fire in that vicinity at the time?

A. I think it was. I am not familiar with the locations.

Q. Showing you what has been marked as Defendant's Exhibit No. 16, I will ask whether you know or do you know what the source of the smoke is which arises near the center of the picture?

A. I would say that is the burning well.

Q. But you were not acquainted with the particular area there and you couldn't swear whether it was or not I assume? [348]

Q. At any rate when you struck the ice it is your recollection that there was a flame off to the right, is that right?

A. Yes, sir.

Q. Is that west of the highway you are speaking of, the flame?

A. I believe it would be west, yes, sir.



(Testimony of Arthur Clinton.)

Q. What time was it when you got into Worland that morning?

A. I couldn't say for sure, just getting daylight.

Q. Have you ever been employed as a truck driver, Mr. Clinton?      A. Yes, sir.

Q. How long experience did you have as truck driver?      A. About maybe 15 years.

Q. And during that experience did you drive any heavy tractors of the same type as the West Coast Special?

A. Never have drove a West Coast Special.

Q. Have you driven the equivalent or same approximate size?      A. Yes, sir.

Q. Have you driven equipment with dual rear wheels, that is, with dual drive dual axled rear wheels?      A. Yes, sir.

Q. And have you driven equipment with semi-trailer attached to such a tractor unit?

A. Yes, sir.

Q. Have you ever operated any equipment of that kind on ice or snow?      A. Yes, sir.

Q. Have you specifically operated that kind of equipment on oiled highways in Wyoming over icy roads?      A. Yes, sir. [349]

Q. And can you tell us the proper way to reduce the speed of a vehicle of that kind and size on an icy road?

Mr. Lush: I object, your Honor; no proper foundation, no identity of conditions established yet.

The Court: Well he hasn't shown similar con-

(Testimony of Arthur Clinton.)

ditions exactly but with the brakes and equipment on the vehicles that he has operated are then like the ones like the West Coast. I think you ought to lay a little further foundation and show the similarity closely to conditions as here. I think you could bring out a better foundation than you have.

Q. (By Mr. Haughey): Are you familiar with the braking equipment of the West Coast Special involved in this accident? A. Yes, sir.

Q. Can you describe how the air brakes were connected and how they were operated?

A. To the truck and trailer.

Q. To both, yes. First to each unit and then to the two together.

A. The brakes are connected to the trailer or the truck through the foot pedal.

Q. The trailer and truck?

A. Yes, they were connected to the trailer and truck operated by the foot pedal. There is also a trailer brake valve on there too to brake your trailer separate.

Q. Where is that valve control?

A. Fastened on to the steering post. [350]

Q. Have you operated truck and semi-trailer combinations equipped with the same type of brakes and brake controls as were on that West Coast Special involved in this accident? A. Yes, sir.

Q. Have you operated such equipment over icy roads? A. Yes, sir.

Q. Have you operated them over the type of slick surface that you encountered north of Wor-

(Testimony of Arthur Clinton.)

land on the morning of the accident? A. Yes.

Q. Will you describe how brakes—will you describe how one should reduce the speed of the vehicle of that kind on a very slick icy surface with the type of brakes used by the West Coast Special?

A. You should use your trailer brakes to slow it down.

Q. And if the trailer is unloaded, would that have any effect on the slowing down of the whole vehicle? A. Yes.

Q. In what way?

A. You would have no weight there to make traction. You wouldn't slow down so quick.

Q. If that did not slow you down adequately, would it be proper then to do any other operation, any other braking operation?

A. You could what they call fan the truck brakes as long as you don't lock your truck wheels.

Q. Now if you fan the truck brakes with that kind of [351] unit, you mean you can apply the truck brake only or truck and trailer brakes together?

A. That would apply the truck and trailer brakes together.

Q. And what about power braking, would that be proper or not? A. That would be proper.

Q. Can you tell us what truckers mean generally when they use the term power braking?

A. They keep the truck in motion by stepping on the throttle using the power on it so none of the wheels would lock.

Q. And at the same time operating a brake?

(Testimony of Arthur Clinton.)

A. Yes.

Q. The foot brake? A. Yes.

Q. Would he in that particular braking operation, would he fan the foot brake or hold it steady?

A. I would say he should fan the foot brake.

Q. By that you mean intermittent application of the foot brake? A. Yes.

Q. Mr. Clinton, did you connect up the brakes, that is, the air hose between the truck and trailer yourself on that West Coast Special you were describing a while ago?

A. It was done in our shop at Mills.

Q. Was that under your immediate supervision?

A. Yes, sir.

Mr. Haughey: That is all. [352]

### Cross-Examination

By Mr. Lush:

Q. When were those connected up, what date? Do you remember?

A. I couldn't state the exact date, approximately the 20th or 21st.

Q. And any competent truck driver could remove it, could he not? A. Yes.

Q. Now when you were talking about the new tractor the company had purchased and the new trailer it had purchased was this a new trailer that had been purchased by the Manning Company that had been involved in this particular accident?

A. No, sir.

(Testimony of Arthur Clinton.)

Q. So the trailer you were talking about wasn't the trailer involved in this accident at all?

A. No, sir.

Mr. Haughey: My recollection was that the trailer he testified was borrowed.

Mr. Lush: I didn't remember him saying anything about a borrowed trailer; if he did, I missed it.

Q. (By Mr. Lush): Now when you testified you connected the air brakes up on this which trailer were you talking about?

A. On the borrowed trailer.

Q. And this operation was actually performed with a [353] borrowed trailer and a Manning tractor, is that right? A. Yes, sir.

Q. Now if I understood you correctly you said as you came south toward Worland out of Basin you ran into some snow, is that right, or did you run into rain there? A. Rain.

Q. Into a rain. Now that is south of Basin and south of the foothills and coming down the road toward Worland, is that right? A. Yes.

Q. And that was about sometime between five o'clock in the morning and sun up?

A. Yes, sir.

Q. And there was no snow on the road from Basin to Worland at all at that time?

A. No, sir.

Q. The road was clear blacktop as far as you could tell? A. Yes, sir.

Q. And where did you run into the snow or did you run into the snow?



(Testimony of Arthur Clinton.)

A. I think we run into the snow in the vicinity of Powder River.

Q. Where is Powder River from Worland?

A. That is approximately 100 miles towards Casper.

Q. 100 miles towards Casper. Now you are not sure just where you ran into that sleeting mist on that morning?

A. No, sir.

Q. And do you remember how far that sleeting mist went [354] south from Worland?

A. I would say it was 10 or 11 miles.

Q. And was that sleeting mist freezing on the highway when you came upon it?

A. Yes, sir.

Q. In other words, was the temperature outside cold enough to freeze this on the highway?

A. It was in that valley.

Q. Do you have any recollection at all what the temperature was that morning?

A. No, I don't.

Q. And you were away south of there that afternoon, I suppose?

A. I was in Casper.

Q. But it was cold enough at the time that you came over there for this mist to freeze on to the roadway?

A. Yes.

Q. Well if that mist continued on northward do you have any reason to suppose it was warmer northward?

A. It was very warm in Lovell.

Q. And you came into misty rain out of Lovell too, didn't you?

A. Yes.

Q. And that continued on down to near Basin?

(Testimony of Arthur Clinton.)

A. It continued about half way through the Windy River Canyon.

Q. Half way through the Windy River Canyon?

A. Yes.

Q. Where is the Windy River Canyon?

A. South of Thermopolis. [355]

Q. Then it was raining the whole way from Lovell down to the Windy River Canyon?

A. Yes, sir.

Q. Do I understand your testimony correctly that you were driving through rain all the time from the time you left Lovell until you were down south of Thermopolis?

A. Well it might let up at spells.

Q. But generally the condition was raining?

A. It hadn't turned to snow yet.

Q. Now you testified you have driven a tractor and trailer under conditions very much identical with these shown here?

A. Yes.

Q. And the size of the West Coast Special?

A. Yes.

Q. And you have driven them on icy roads?

A. Yes, sir.

Q. Did you ever come upon those icy roads unexpectedly?

A. Yes.

Q. Did you lose control of your vehicle when you did it?

A. No, I don't believe I have.

Q. Now you testified that under those circumstances you would use your trailer brakes to slow the rig down, is that right?

A. Yes, sir.

Q. You would apply those first?

(Testimony of Arthur Clinton.)

A. Yes, sir.

Q. And then you would apply your tractor brakes, your combined brakes of the tractor and trailer brakes on the foot pedal if your vehicle did not slow down rapidly enough, [356] is that correct? A. Yes.

Q. And you would fan those brakes?

A. Yes, sir.

Q. Would you keep your tractor or trailer brakes on when you were doing that?

A. Your trailer brakes work in connection with your truck brakes.

Q. Didn't you say first you would set your trailer brakes? A. Yes.

Q. And having set your trailer brakes you would fan your tractor trailer brakes? A. Yes.

Q. Would you release the trailer brakes first?

A. Yes.

Q. Now on ice would you fan the brakes or pump them as we laymen say?

A. In order to be sure and not lock the tractor wheels.

Q. And if you lock the tractor wheels, what would happen? A. Very liable to skid.

Q. And if you did start to skid, how would you get it out of the skid?

A. You would have to apply power.

Q. Would you have to release the brakes also?

A. No, you could keep fanning them if you want to.

(Testimony of Arthur Clinton.)

Q. You could keep fanning them but if you did keep fanning them, you must apply power?

A. Yes.

Q. And regardless what you did about brakes you would not come out of the skid until you did apply power? [357]

Q. What is the difference? Will you explain it is us?

A. Well you might be able to straighten the truck up without applying power if you have enough forward momentum.

Q. You would turn your wheel in the direction of the skid, would you, in your attempt to do that?

A. Yes, sir.

Mr. Lush: That is all.

### Redirect Examination

By Mr. Haughey:

Q. When you first came into the area which Mr. Lush describes as rain, is that the area where you said you first encountered mist?

A. I believe it was misty most all the way; it wasn't as bad in some places as others.

Q. And do you remember where the rain itself started?

A. I believe it was around Basin or Manderson.

Q. And did that change later to sleet or not?

A. No, it started freezing on the windshield.

Q. Can you describe where the freezing on the windshield took place with reference to the place you first came on to the ice?

(Testimony of Arthur Clinton.)

A. It was right after we started across the valley toward Worland, after approximately six or seven miles after [358] you leave Manderson.

Q. With reference to the town of Worland where did you come on to that ice, would you tell us?

A. I would say it was 10 or 11 miles north of Worland.

Mr. Haughey: That is all.

The Court: Anything further?

Mr. Lush: I am through, your Honor.

Mr. Goppert: We will call a witness out of order. [359]

\* \* \*

Mr. Goppert: We will offer in evidence at this time Defendant's Exhibit No. 16.

Mr. Lush: No objection.

The Court: It may be received in evidence.

Whereupon said Defendant's Exhibit No. 16, being a photograph showing smoke, offered and received in evidence, is a part of this record.

### A. J. PROSSER

was called as a witness for defendant, and having been first duly sworn, testified as follows:

### Direct Examination

By Mr. Goppert:

Q. State your name.                   A. A. J. Prosser.

Q. Where do you reside?

A. Casper, Wyoming.



(Testimony of A. J. Prosser.)

Q. How long have you resided at Casper, Wyoming?

A. About four years and a half.

Q. Were you employed by the Fred M. Manning, Inc., in December of 1947?           A. Yes.

Q. Beg your pardon—1946. I wanted to know for 1946? [360]           A. Yes.

Q. And are you employed by that company at this time?           A. No, sir.

Q. Who are you now employed by?

A. General Petroleum Corporation.

Q. How long since you were working for the Manning Company?

A. December 22nd, I believe.

Q. Of 1948?           A. 1947.

Q. What was the nature of your employment in December of 1946 with the Manning Company?

A. Superintendent of Transportation.

Q. Did you have charge of the operation of the Manning trucks and motor vehicles at that time?

A. Yes, sir.

Q. And were you the one that did the hiring and firing of the truck drivers?           A. Yes, sir.

Q. Did you have occasion while acting as Superintendent of Transportation for this company to employ one Robert B. Hawkins?

A. No, sir, I think he went to work a few days before I was in charge of the transportation. I believe Bob King hired him.

Q. How long have you known Mr. Hawkins?

(Testimony of A. J. Prosser.)

A. Well I believe about approximately fifteen years.

Q. Have you been acquainted with his operations as a truck driver during that period of time? [361]

A. Not all that period of time but about 1923 up through 1926 I knew quite a bit about Mr. Hawkins.

Q. 1923 to 1926? A. Yes, sir.

Q. What was your knowledge of him as to whether or not he was a good or a poor truck driver?

Mr. Lush: Objected to, your Honor. It is a conclusion of the witness as to his opinion as to the ability of another man to drive truck without a word of evidence he ever saw him drive a truck.

The Court: Yes, I think so.

Q. (By Mr. Goppert): Have you observed him driving truck during any of that period of time?

A. Yes.

Q. How many years?

A. Before my being on transportation with Manning I was in charge of rigging up and tearing down, which was titled Rigup and Teardown Supervisor.

Q. You mean rigging up and tearing down drilling rigs? A. Yes, sir.

Q. And as such did you get acquainted with various operations that the truck driver performed?

A. Mr. Hawkins was driving at that time for Manning.

Q. And have you had occasion to observe his manner of operation of vehicles, do you know—and

(Testimony of A. J. Prosser.)

particularly trucks do you know whether or not he was competent and capable?

A. Yes. [362]

Q. And what was that situation?

Mr. Lush: I object, your Honor. I don't believe that one person can testify to another's capacity to drive a vehicle.

The Court: Well I will let him answer the question. It is only about his constant or continued observation for three years driving various trucks, was it? A. Yes, sir.

The Court: What was it? What do you say about it?

A. Well at the time I worked for Manning while I was Rigup and Teardown Supervisor I seen him move a considerable amount of heavy iron in the field and over the road without any accidents, and he is very careful of a truck, takes good care of a truck. I would say that would be my version of it.

Q. (By Mr. Goppert): Were you the one who picked him to take charge of the West Coast Special that was involved in the accident in December, 1947?

A. Yes, sir.

Q. And was that in the nature of a promotion to get that opportunity?

Mr. Lush: I object to the materiality of this, your Honor.

The Court: Well I don't know. What do you mean by that promotion?

Q. As between the drivers of the Manning Company did you [363] select him as being the one to trust this equipment with?

(Testimony of A. J. Prosser.)

The Court: Well you considered it a position of considerable responsibility and required skill and dependability and all that, did you?

A. That was my idea of giving it to him.

The Court: You employed him because of your knowledge of his experience as a driver?

A. Yes, and ownership of trucks.

The Court: Well I think that is probably what you want to develop, isn't it?

Mr. Goppert: That is right.

Q. (By Mr. Goppert): And you picked him out of all the Manning truck drivers to take this new equipment on the job, did you not?

A. That is right.

Q. And it was a desirable job for any of the drivers, wasn't it?

A. That is right.

Q. And had you had occasion to inspect this equipment as it was assembled at the garage of the Manning Company at Mills, Wyoming, in 1947?

A. Yes, not all of it. All the time I had eighteen pieces of equipment running, the majority of it. I was with it sometime during its operation.

Q. Well you had occasion to see this equipment before it went out on the job, did you not? [364]

A. Yes, sir. I borrowed the trailer from Pittman.

Q. You were the one that arranged for the trailer to equip it, were you not?

A. That is right.

Q. And was it properly equipped with brakes?

(Testimony of A. J. Prosser.)

A. It had Westinghouse Airbrakes on it, yes.

Q. And did those brakes consist of airbrake that was manually controlled from a lever on the front steering wheel to the trailer, and was there a foot brake pedal brake that controlled the air on the entire unit, that is, the tractor and trailer together?

A. Yes, the hand valve was separate from the foot valve on the trailer alone and the foot valve and the trailer was connected together.

Q. And did you observe how the connections were made for the air between the truck and the trailer?      A. Yes, sir.

Q. Before it went out on this trip?

A. Yes, sir.

Q. And what was that connection?

A. Well there was a twelve foot piece of hose, I believe. I might be wrong in inches, but it was at least twelve foot and it had gladhand on each end. The truck had gladhands on it and the trailer had gladhands on it and attached it together when the trailer was intact.

Q. What kind of hose?

A. Special airhose; I think two ply hose.

Q. Was it regular equipment for that kind of job? [365]      A. Yes.

Q. Would it stand the pressure of those airbrakes?      A. Yes.

Q. And those gladhands you mentioned, are those similar to the connections between passenger cars, pullman cars on the air?



(Testimony of A. J. Prosser.)

A. They are practically the same. They are made light and a little different. That is what they are called.

Q. Are they standard equipment on these semi-trailer units?

A. Practically all semi-trailers have them as standard equipment.

Q. And did you have occasion to observe this equipment following the accident?

A. I observed it about ten o'clock the night of the accident.

Q. Where were you when you first received word of the accident?           A. Casper.

Q. Had you been in Casper all that day?

A. I couldn't answer you that now. I don't know.

Q. What time of the day did you leave Casper?

A. I left there in the neighborhood of ten or fifteen minutes after four; as soon as I knew there was a wreck.

Q. To go to Worland.           A. Yes.

Q. When you got to Worland did you go immediately to [366] the scene of the accident?

A. No, I went to the hospital.

Q. To see the truck driver, Mr. Hawkins?

A. That is right.

Q. And you found him there?           A. Yes.

Q. And when did you go to the scene of the accident?

A. I don't know for sure, sometime during ten o'clock that night.

(Testimony of A. J. Prosser.)

Q. Was the Manning truck and trailer there?

A. It was on the barrow pit on the west side of the road. It had been pulled off the road. When I got there the road was clear.

Q. You say on the west side of the road?

A. East side.

Q. Did you make any inspection to see or observe whether or not there was any part of the connection for the airhose there?

A. Yes, sir, I did.

Q. What did you find?

A. Well I found the hose completely burned up but all the gladhands were intact.

Q. They were still connected at that time?

A. They were still connected but the hoses were burned in two.

Q. Was there any remaining stubs, pieces of the hose remaining on any of these four [367] gladhands?

A. Not that I saw, no.

Q. Did you have anything to do with the removal of the Manning equipment from the scene of the accident afterwards?

A. Personally I didn't move anything myself. I went back myself and picked up the chains, jacks, lock rings and flares and whatever other things I could find and sent two trucks to haul it in after I got a release from the insurance company.

Q. Did the front tires of the tractor portion of this unit burn?

A. Not to blow out or anything. They burned a little but they didn't blow.

(Testimony of A. J. Prosser.)

Q. That is, they were scorched but weren't consumed by the fire?

A. They weren't useable afterwards. They got soft on one side, I believe next to the bus.

Q. From what you saw that was burned up on that truck where were these hoses, that is, air hose connections with reference to the portion of the vehicle that did burn?

A. Well the ones on the tractor are fastened just above the winch on the lefthand side of the tractor and on the trailer one on past center on each side.

Q. Was that portion of the trailer immediately in the area where these gladhands connected on to the trailer, was [368] that burned?

A. It burned the floor out of the trailer for about two feet back right where the gladhands were attached on to.

Q. That is behind the gladhands and had it burned up on the tractor on the left side?

A. It was a complete loss the tractor was.

Q. Isn't it a fact that the gas tank is right down under where those hose connections were, that is, the lefthand gas tank?

A. I would say the lefthand gas tank was possibly two feet from where the hose, maybe three feet from where the gladhands come off the tractor, and the other end of it probably the same distance from the end of the tractor.

Q. That fire burned up the eight rear tires of that big truck, did it not?

(Testimony of A. J. Prosser.)

A. Yes, and one spare tire that was laying on the trailer.

Q. That was laying on the front end of the trailer, was it?           A. Yes.

Q. Was this truck equipped with any device for controlling its speed?

A. Yes, it has a governor on it but I believe the boys told me they had taken it back after I inspected the job.

Q. You couldn't tell what it was set at when you last saw it?

A. We hadn't never had it out of the yard to see what [369] it was set at top speed. They took it back and set it at 45 miles an hour.

Q. That is what they were to set it at?

A. That is what they were to set it at.

Q. Did you inspect it to see if that was done?

A. No, I wasn't there at the time. It left before I got back and I hadn't seen it any more.

Q. Did you have occasion to observe the condition of the highway from Worland to the scene of the accident?           A. Yes, sir.

Q. And as I understand it that was sometime approximately ten o'clock that night?

A. Approximately ten o'clock.

Q. And what was that condition?

A. It was rough and awful slick.

Q. Did you observe the condition as you went north from the scene of the accident?

A. I never went north.

Q. You didn't look down that way either?

(Testimony of A. J. Prosser.)

A. It was dark. I just turned around in that driveway there west from where the bus set on the east side and turned my lights over toward the tractor and got out in the road there.

Q. You are acquainted with the possum belly on these semis?           A. Yes.

Q. And as I understand it that is an iron box that is made between the two sides of the frame and a couple of [370] cross pieces that form the trailer body, or form the tractor body?

A. That is right.

Q. And did you have occasion to observe if there was any hose in that after this fire?

A. There was no hose in it because I had taken everything out of it, taken the chains and things.

Q. You found no hose there?           A. No hose.

Q. If there had been hose there, would it have burned?

A. I would have thought it would as long as the chains weren't any good.

Q. Had the temper been taken out of the chains?

A. Yes.

Q. By the heat of that fire?

A. This possum belly is drilled full of holes in the bottom and it just acts as a furnace coming up through there with the air from the bottom with the gasoline spraying.

Q. Have you had experience as a truck driver?

A. Yes.

Q. Are you acquainted with the proper method



(Testimony of A. J. Prosser.)

of stopping a vehicle of this type that is involved in this accident on ice?

A. I would think I would be, yes.

Q. How many years experience?

A. Well in the neighborhood of twenty-five.

Q. And as such during that time have you had occasion to stop vehicles of this size and type on ice?      A. Yes, I believe I have. [371]

Q. And what would you say is the proper method of handling that vehicle when you got off of a good road on to ice?

A. I would say brake it from the trailer. If you can't do it that way, why power brake it and through tractor and trailer fanning the brakes.

Q. And that is the proper method, if you want to do it that way it could be done?

A. Well unless you can slide it into gravel or something else.

Mr. Goppert: You may inquire.

### Cross-Examination

By Mr. Lush:

Q. Now, Mr. Prosser, when you step down on the brakes under the conditions described hard enough to cause the trailer to skid or the tractor to skid, how would you go about getting the tractor out of the skid?

A. Well I would turn it toward the skid and apply power to it.

Q. Turn it into the skid and apply power?

A. If I got into the skid.

(Testimony of A. J. Prosser.)

Q. If you braked it hard enough to put it into a skid, have you braked it too hard?

A. I don't believe I quite understand you. [372]

Q. In other words, the proper method of braking under those circumstances would not throw you into a skid?

A. Well I wouldn't say that. It could be rough conditions of the road will cause you to skid the same as your braking.

Q. And if you put your brakes on and started to skid, you would immediately release the brakes?

A. That is what I would do.

Q. And then apply power? A. Yes.

Q. And if you do that, what happens?

A. Well it will pull itself out.

Q. Now you say you would also slide yourself in gravel if you could. A. That is right.

Q. Under the circumstances where would you ordinarily find that gravel?

A. Right at the edge of the road.

Q. On the shoulders?

A. On the shoulders.

Q. And if there was a vehicle approaching from the opposite direction, you would endeavor to make your own shoulder to skid it on?

A. That is where we always try.

Q. Now you testified that there was an extremely hot fire in that possum belly?

A. That is right.

Q. And the action of the fire will reduce those air hoses to ashes?

(Testimony of A. J. Prosser.)

A. That is my belief anyway, two ply rubber hoses.

Q. And there were hoses in the bottom of the possum belly? [373]

A. No, there's no hoses in the bottom of the possum belly; they were hanging down over the possum belly.

Q. Were there ashes in the possum belly?

A. I didn't see.

Q. You picked chains out?

A. There was dirt and everything else.

Q. You wouldn't swear now there were not in the ashes hoses in there?      A. No, sir.

Mr. Lush: That is all.

### Redirect Examination

By Mr. Goppert:

Q. In your experience as a truck driver would you say that a truck will skid from other causes than braking?      A. Yes, sir.

Q. And you mentioned rough roads, and did you say gravel?

A. No, I said that would be the way I would stop it.

Q. But if you had some gravel on one side and not on the other, might it cause a skid?

A. It is possible.

Q. And when you say a rough spot will cause it, you mean a place where there is a low spot and then a high spot?      A. Yes, very apt to.

(Testimony of A. J. Prosser.)

Q. Or just a little bump?

A. Well it would take a pretty good size bump with a [374] truck as big as that was.

Mr. Goppert: That is all.

Mr. Lush: That is all.

Mr. Haughey: May I recall Mr. Clinton for one more question?

The Court: Very well.

### ARTHUR CLINTON

resumed the stand and testified as follows:

### Redirect Examination

(Continued)

By Mr. Haughey:

Q. Did the West Coast Special involved in this accident have a governor of any kind on it?

A. Yes, sir.

Q. At what speed was that set to, or rather how fast was that truck able to go with the governor set as it was?

A. As close as we could get it to 45 miles an hour.

Q. That is on level road? A. Yes.

Q. Did you test it yourself? A. Yes.

Q. Did you try the truck to see how fast it would go? A. Yes.

Q. What was the maximum speed?

A. It hanged right at 45 miles an hour, between 42, 45, possibly 46.

Mr. Haughey: That is all. [375]

(Testimony of Arthur Clinton.)

Recross-Examination

By Mr. Lush:

Q. What was the nature of the governor you had on there, did it cut off air, reduce amount of gas or how was it governed?

A. It is connected on to the carburetor. I believe it is vacuum operated, the governor, and cut your air off into your carburetor.

Q. It cuts the air off to the carburetor?

A. Yes.

Q. And you never examined that after the accident, did you?      A. No, sir.

Mr. Lush: That is all.

The Court: We will take a recess. (3:00 p.m.)

(Court resumed at 3:25 p.m., at which time all counsel and plaintiff were present.)

Mr. Goppert: If the court please, I want to recall Mr. Prosser for a question or two.

The Court: Very well.

A. J. PROSSER

resumed the stand and testified as follows:

Redirect Examination

(Continued)

By Mr. Goppert:

Q. You were acquainted with the hand lever controls in [376] the cab of this West Coast Special, were you not, as it was equipped before going out on this trip?      A. Yes.



(Testimony of A. J. Prosser.)

Q. And will you state the number and locate each of those controls, those hand lever controls that were in the front cab?

A. Do you want all the winch controls, the winch brake, the shifting levers and everything that was in the cab?

Q. No, not all the controls. I mean the hand lever controls. I think there has been evidence of three hand lever controls or four in the cab?

A. Well there is one hand lever control, the air valve control, which is on the steering post on the right-hand side. Then it has a parking brake, emergency brake as some people call it, and then there is a lever down between the driver's seat, you have to reach down by that and pull it up.

Q. Describe that lever? Is that a horizontal lever or vertical lever?

A. It is a horizontal lever and hangs from the back part of your seat and extends to the front part of the seat and you have to pull it up to apply it.

Q. You would have to raise that to apply the emergency brake on the tractor, is that it?

A. Yes.

Q. Go ahead.

A. And then it has a shifting lever as all trucks do in the floor board. It has three levers mounted over to the right [377] of your leg just beyond the shifting lever.

Q. That shifting lever is the lever that shifts from one speed to the next? Go ahead and tell us about those other three.

(Testimony of A. J. Prosser.)

A. It also has three levers, one that operates the winch, one by the clutch, one chuck brake and one is outside brake.

Q. And will you name them in the order from the driver's right, towards the right of the cab?

A. Well, I might not be able to do that. I never drove them enough to know. I think I could tell you how they are attached. The one next to the driver was the clutch, the next one to that is what we call the chuck brake.

Q. Does that brake have anything to do with the, either the wheels of the tractor or trailer?

A. No, sir.

Q. Do any of these three levers you are talking about have anything to do with either the brakes of the tractor or trailer?      A. No, sir.

Q. Then if one of those was found pulled back, that would have nothing to do with the braking or running gears on that of that equipment?

A. No, sir. They might be in any position while operating the truck down the highway.

Q. They then could all three be back and it wouldn't affect the brakes of the vehicle?

A. That is right.

Mr. Goppert: That is all. [378]

### Recross-Examination

By Mr. Lush:

Q. Just a minute, Mr. Prosser. This Pittman trailer you attached on to the tractor, do you know whether or not the brakes had been recently re-

(Testimony of A. J. Prosser.)

lined on that Pittman trailer?           A. No, sir.

Mr. Lush: That is all.

### Redirect Examination

By Mr. Goppert:

Q. Were those brakes in good working order when you tested them?           A. Yes, sir.

Mr. Goppert: That is all.

### ROBERT B. HAWKINS

was called as a witness for defendant, and having been first duly sworn, testified as follows:

### Direct Examination

By Mr. Goppert:

Q. State your name.

A. Robert Hawkins.

Q. Your middle initial?           A. B.

Q. And where do you reside at this time? [379]

A. Kenworth, Washington.

Q. And what is your employment at Kenworth, Washington?           A. Transportation foreman.

Q. For what concern?

A. Atchison-Jones Construction Company for the Atomic Energy Commission.

Q. How long have you been so employed?

A. 22 months.

Q. What is your official job there in that trucking operation?

A. Mostly moving and setting heavy machinery.

(Testimony of Robert B. Hawkins.)

Q. I mean are you a truck driver or a foreman?

A. I am a foreman.

Q. How long have you held the position as foreman there?      A. About 20 months.

Q. Did you start there as a truck driver?

A. Yes, sir.

Q. And how many trucks under your control there?      A. I have about 25.

Q. Are they heavy trucks for hauling?

A. Yes, sir, they are.

Q. What size?

A. Well, there are a lot of them known as low boys or prime movers. They use them for moving heavy equipment. They will run from 40 to 50 ton capacity.

Q. Are they as big as this West Coast [380] Special?      A. Yes, sir, they are.

Q. Bigger?

A. They may have some bigger. I don't have any bigger than that.

Q. Prior to going out to this job at Kenworth, where were you employed?

A. The last employment I had was with Manning Drilling Company.

Q. Fred M. Manning, Inc.?      A. Yes, sir.

Q. And how long had you been engaged as a trucker or truck driver in your lifetime?

A. Well over a period of approximately 25 years.

Q. And are you a married family man?

A. Yes, sir.

(Testimony of Robert B. Hawkins.)

Q. What does your family consist of?

A. Wife, two daughters and a son.

Q. And how long were you employed by the Manning Company prior to the accident of December 27th, 1946?

A. I went to work for the Manning Company the first day of February, 1946.

Q. Had you had experience prior to that time driving large semi-trailers? A. Yes, sir.

Q. Was that always as an employee?

A. No, sir.

Q. Have you owned and operated your own outfit? A. Yes, sir.

Q. What outfit was that and where was it located and [381] during what years?

A. My own business?

Q. Yes.

A. From 1926 to 1931, Gerber, Oklahoma.

Q. Was it oil field hauling? A. Yes, sir.

Q. Was this 25 years of your experience outside of your work on the Atomic Energy Project at Pasco, the oil field hauling? A. Yes, sir.

Q. Had you ever been so unfortunate as to be involved in an accident prior to this one?

A. No, sir.

Q. Had you driven trucks of similar kind?

A. Yes, sir.

Q. Before starting out on the trip—as I understand it started at Casper, is that right?

A. That is right.



(Testimony of Robert B. Hawkins.)

Q. And had you tested this vehicle, this truck and trailer?      A. Yes, sir.

Q. And had you checked it as to its brakes?

A. Yes, sir.

Q. And as to its handling?      A. Yes, sir.

Q. Did you find it to be in reasonable satisfactory or really satisfactory condition?

A. Yes, sir.

Q. Will you state to the court something about the equipment of that vehicle before starting on that trip? Probably we can save considerable time if I ask you a few questions. Was it equipped with a winch?      A. Yes, sir. [382]

Q. And what they call a headend rig?

A. Yes.

Q. Is that the rig that contains the winch?

A. It is a rig built around the winch.

Q. And at one end of that rig, I mean each rear corner of the front of the bed there is a three-inch, two tubes or pipes?      A. Yes.

Q. And goes up as high as the cab or higher?

A. Approximately.

Q. And there's cross bars on that that go from side to side between those two up and down beams, are there not?      A. Yes, sir.

Q. And back of that some little distance, say two or three feet, is a sloping tubular three-inch pipe that goes down to another pipe that connects down to the frame, is there not?      A. Yes.

Q. And isn't it a fact that that is true on both sides of the vehicle?      A. Yes, sir.

(Testimony of Robert B. Hawkins.)

Q. And there are wings in between those two big tubular arrangements? A. Yes.

Q. And there are cross bars that brace that, are there not? A. Yes.

Q. And this winch has a steel cable on it, does it not? A. Yes, sir.

Q. To be used for loading and erecting purposes in oil field work? A. Yes. [383]

Q. And that winch and the power take off to it is controlled by three levers in the cab, are they not? A. Yes, sir.

Q. And then the trailer hitch is on what you call a fifth wheel, isn't it? A. Yes.

Q. Now will you describe that fifth wheel to the court?

A. As well as I could describe it to the court it is a table.

Q. Is it round or approximately round?

A. Yes, sir. That is built between the dual tandem wheels on top.

Q. In other words, sort of a round table; the middle of it is in the center between those double sets of duals? A. That is right.

Q. And the connecting link between that and the trailer is some kind of pin, is it, that goes down through that table?

A. It is a pin that is attached to the trailer,

Q. Now then the attachment for brakes to the trailer, what is the means of braking on the trailer and the tractor, that is, what is the substance that

(Testimony of Robert B. Hawkins.)

is used in the braking, is it a fluid or liquid, or what?      A. You mean the kind of power?

Q. For the braking?

A. Westinghouse air.

Q. Airbrake?      A. Yes, sir.

Q. And how is that air controlled so far as the trailer [384] is concerned?

A. It is operated by a hand valve that is mounted on the steering post on the right hand side of the steering post.

Q. And is that the conventional place for the mounting of that trailer brake?      A. Yes, sir.

Q. And does it have any other air control either singly or in connection, or brake control either singly or in connection with the tractor?

A. Nothing but air.

Q. And is there some other control other than the hand control?

A. It has a foot pedal, yes, sir.

Q. Does that foot pedal set the air on the trailer alone?      A. No, sir.

Q. What wheels does it set the brakes on?

A. When the trailer is attached to the truck the foot pedal controls the brakes on the truck and trailer.

Q. Are the front wheels equipped with brakes that come from this same foot pedal?

A. Yes, sir.

Q. In other words, if you put the air on the tractor with that trailer attached, does it set the

(Testimony of Robert B. Hawkins.)

brake; that is, this foot pedal does it set the brake on each and every wheel on that vehicle?

A. Yes, sir.

Q. And is that done on an equalizing basis; that is, does it hit them all uniformly?

A. Yes, sir.

Q. Is there an equalizer on it? [385]

A. You have full pressure to all the wheels.

Q. And the brake bands are different sizes by widths in order to adjust the pressure evenly?

A. That is right.

Q. Was this tractor equipped with any kind of a device to control the speed? A. Yes.

Q. And what kind of device was that, Mr. Hawkins? A. It was a governor.

Q. And do you know the nature of the governor?

A. I couldn't tell you the working conditions of it. I do know there was a governor on it.

Q. Do you know how fast you could drive it?

A. They told me it was approximately set at 45 miles an hour.

Q. You had experience driving it on this trip?

A. Yes.

Q. What did you find was the maximum?

A. That was the maximum.

Q. Forty-five? A. Yes.

Q. Mr. Hawkins, had you had in your experience as truck driver the experience of getting on ice suddenly prior to this time? A. Yes, I have.

Q. Have you driven on ice?

A. Yes, I have.

(Testimony of Robert B. Hawkins.)

Q. Have you stopped on ice?

A. Yes, I have.

Q. Have you skidded on ice before?

A. Yes, sir.

Q. And have you skidded without putting on any brakes?

A. Yes, you can skid without putting on [386] brakes

Q. And do you know the usual method of applying brakes to stop a vehicle when it got on ice or got into a skid on ice? . A. Yes, sir.

Q. Do you know how to take a truck and trailer out of a skid?

A. I knew how to try to, yes, sir.

Q. And on this final trip you left Casper on what day, if you know?

A. I believe it was the 23rd of December, 1946.

Q. Where did you go to?

A. I went from Casper to Badger Basin, Wyoming.

Q. Now Badger Basin is located, is it not, on the Clark's Fork River near the Montana-Wyoming line?

A. It is approximately northwest of Powell, Wyoming. You go to Sheridan and take the road to Cody and a few miles out there turn to the right and go out through some pastures.

Q. Do you know the well the Manning Company was having to work on at that time?

A. The location?

Q. Yes, what one it was?



(Testimony of Robert B. Hawkins.)

A. I couldn't definitely name—I think I know what it was. I couldn't definitely say. It was just a couple miles from Badger Basin store.

Q. Was it one of the Seaboard wells of the General Petroleum?

A. It runs in my mind that it was General Petroleum. I [387] couldn't say about that.

Q. The road from that there comes to Powell?

A. Yes.

Q. And then there you reach U. S. No. 320, isn't it?

A. I believe it is.

Q. And that connects up with U. S. No. 20 at a place between Cowley and Lovell, is it not?

A. Yes.

Q. You worked on that day and did some hauling around that area and on the 27th day of December, 1946?

A. Yes.

Q. I believe you started back to Casper with the outfit?

A. Yes, sir.

Q. Had you hauled it up with a load?

A. Yes, sir.

Q. Was it loaded with a load en route to the field at Badger Basin?

A. Yes.

Q. And as I understand it it was empty for all the way back from Badger Basin until you got down to the accident?

A. Yes, sir.

Q. Do you recall the approximate time of day that you left Lovell that day?

A. I think it was about 12:30.

Q. Had you had your lunch at Lovell?

A. I stopped at Lovell and ate lunch.

(Testimony of Robert B. Hawkins.)

Q. And what was the first stop you made after leaving Lovell that you recall?

A. The only stop I recall making after leaving Lovell was about a mile north of Basin, [388] Wyoming.

Q. What was the occasion for that stop?

A. As I came down the road there was a Highway Patrolman with a panel pickup parked there making truck inspections.

Q. And what did you do there?

A. I stopped and he inspected the truck and trailer.

Q. Just a minute. When you drove up to that inspection how did you stop, tell me?

A. I drove up and applied all the brakes.

Q. Did you skid all the wheels?

A. Yes, sir.

Q. Trailer and truck and all?

A. Yes, sir.

Q. Was that the requirement or practice of these highway inspectors when you came upon them?

A. Yes, sir, it was. We had been stopped so many times and after we were stopped they always asked us to skid our wheels and try our brakes, and whenever we could see we were going to be stopped by a Highway Patrolman we brought it to a stop with the brakes applied so they could inspect it.

Q. You showed the Highway Patrolman your outfit?      A. Yes, sir.

(Testimony of Robert B. Hawkins.)

Q. Then coming down the roadway from where you left the Highway Patrolman you cruised in a general southerly direction, did you not, to the scene of the accident? A. Yes, sir.

Q. And will you tell the court what the condition was of that highway down to the scene of the accident and down to [391] wherever it changed, if at all?

A. The highway was in good condition from the time that I talked to the Patrolman at Basin up to a point just before the scene of the accident.

Q. And was there snow on it?

A. No, no snow.

Q. Over that place that you drove from where you met the Highway Patrolman and had the inspection down to a short distance north of this accident? A. No, sir.

Q. There was no ice? A. No, sir.

Q. Can you locate with reference to any natural objects—withdraw that—did you see a bus coming from the south? A. Yes, sir.

Q. And about what point had you reached when you first observed that bus?

A. As well as I can remember there was some trees on the right hand side of the road, which would be the west side, is about the first recollection that I remember; it might possibly have been two or three blocks from the bus.

Q. Do you remember a rise in the road?

A. Yes, sir.

(Testimony of Robert B. Hawkins.)

Q. Was that in front of you when you first saw the bus?

A. As well as I remember I believe there was apparently around in there.

Q. And did you at that time come to any conclusion as to where you and the bus would meet?

A. Well, from a distance—— [392]

Q. I mean if neither of you changed your speeds?

A. From the distance that we were it looked to me like there was a good possibility of us meeting on this bridge.

Q. And what was the appearance of the bridge as you approached it then from the north?

A. Well, the bridge had a railing on it that set up around three feet and was covered with what apparently looked to me like snow and it looked narrow to me from when I first seen the bus approaching.

Q. Did it look like to you at that time it would be safe to pass that bus on that bridge?

A. No, it didn't.

Q. And did you observe at that time about what speed you were traveling?

A. I imagine I was traveling around 35 miles an hour.

Q. You weren't going your full limit?

A. No, sir.

Q. Did you estimate the bus coming at about the same speed?

(Testimony of Robert B. Hawkins.)

A. Yes, sir, it looked to me like it was probably traveling about the same rate of speed.

Q. It appeared to be on its own side of the roadway, didn't it? A. Yes.

Q. You observed that curve in the road between the two of you at that time? A. Yes.

Q. And did you know at that time that there was ice under that snow that you observed on that bridge from the [393] distance? A. No.

Q. What did you do at that time when you decided if you kept on at the same speed you would meet and pass on the bridge?

A. I tried to stop.

Q. And when you say you tried to stop—I mean what did you do in the way of trying to stop?

A. I applied the brakes to my trailer.

Q. And by what means?

A. With the hand valve.

Q. Was that the one on the right hand side of the front steering wheel? A. Yes, sir.

Q. Did you do it solidly or lightly?

A. No, I tried to check it gradually.

Q. And what happened?

A. Well, it seemed to me like it hit some rough snow or ice on the road and caused the trailer to slew to the east.

Q. And you were rolling forward at that same speed of 35 miles, possibly a little checked at that time? A. Approximately that.

Q. And did you then attempt to use additional



(Testimony of Robert B. Hawkins.)

means of slackening up the speed on that vehicle and equipment that you were driving?

A. When I see I couldn't check it with these trailer brakes and the trailer was going to the east, I naturally turned the truck to the east to try to go with the skid and applied the foot brake. [394]

Q. Now that was the foot brake that applied the air on both the trailer and the tractor?

A. Yes, sir.

Q. And how did you apply that foot brake?

A. By applying it and releasing it.

Q. You mean with your foot?

A. Yes, sir.

Q. Then can you place approximately where you were on that highway when you applied that foot brake with reference to any natural objects along the highway?

A. It seemed to me like it was as well as I remember about where that driveway come out of that farm house.

Q. Which way, on the west side or the east side of the road?      A. On the west side.

Q. And then you started your vehicle toward the east as I understand it, your left, to follow the trailer?      A. That is right.

Q. And do you know what fanning brakes is?

A. Well, that is what I would call applying and releasing brakes, touching it on and off.

Q. Was that what you were doing?

A. Yes, sir.

(Testimony of Robert B. Hawkins.)

Q. And did you continue to do that until the vehicle got over to the east side of the highway?

A. Yes, sir.

Q. Did you observe how far to the east side of the highway the equipment went?

A. As well as I remember, it went pretty well to the east side of the highway. [395]

Q. Then what happened?

A. It seemed like it was straightened up, and when it seemed like that the truck had gotten pretty well in front of the trailer I tried to pull it out with power by applying my foot to the brake and giving it some gas to make it pull itself.

Q. And was that the last effort you made just before the collision?

A. About the last. It was coming out of it pretty well and started across the road to the right side.

Q. Was the bus coming toward you at the same time?

A. Yes, it was.

Q. You could see a collision was imminent, could you not?

A. Yes, sir.

Q. And about how fast was your vehicle going at the time of the final impact, if you have any idea?

A. I couldn't definitely state how fast it was going but it must have been down to at least ten miles an hour.

Q. You had actually slackened it considerable, had you not?

A. Yes, sir.

Q. Did you know before putting on your brake

(Testimony of Robert B. Hawkins.)

on your trailer the first time back to the north that there was ice on that road?      A. No, sir.

Q. You had seen some snow up there on the bridge, hadn't you?      A. Yes, sir. [396]

Q. And as you went along you observed more snow and more ice all the time, didn't you?

A. Yes, sir.

Q. What was the first thing you did after the collision—wait a minute, I will withdraw that—What happened when the two vehicles collided?

A. Well, when the two vehicles collided they immediately burst into flames.

Q. Did you observe what part of the two vehicles collided, that is, which part with the other part?

A. As well as I remember the east, the lefthand corner of the bus hit the left side of my truck about half way back in the gas tank.

Q. Was that just right at the rear of your cab?

A. Just exactly back of the cab, yes, sir.

Q. What happened to you at that time when they first hit; did you pass out or?

A. No, I didn't pass out but I was hurt so bad that I was momentarily stunned and I do remember it roasted my head off and flame came up under the door on the lefthand side of the cab and across my face and burned whiskers off my face and here off the side of my head and it brought me out of it pretty fast.

Q. And when that happened did you proceed to do something?

(Testimony of Robert B. Hawkins.)

A. Yes, sir, proceeded to get out of the truck.

Q. Was your motor left running? [397]

A. No, sir, I turned the switch off.

Q. When did you turn the switch off?

A. Just after the impact.

Q. And when you got out of that truck was there somebody else in the truck with you?

A. Yes, sir.

Q. Who was that?

A. A boy by the name of Taaffae.

Q. Do you know where he is at this time?

A. No, I don't.

Q. Have you heard where he was?

A. I have heard, yes.

Q. Where?

A. I heard he was in Venezuela, in the Army.

Q. His name was Richard Taaffae?

A. Yes, sir.

Q. He was your helper on that trip?

A. Yes.

Q. That is, helper for the handling of the equipment?

A. Yes, sir.

Q. When you climbed out where was Mr. Taaffae?

A. Mr. Taaffae was sitting in the seat with his head against the dash; he was knocked unconscious.

Q. And how did you get out?

A. I climbed over him and opened the door and got him and pulled him out.

Q. In other words, you got out which door? [398]

A. I got out the right door.

(Testimony of Robert B. Hawkins.)

Q. And you were the first one out of the truck?

A. Yes.

Q. And you pulled Taaffae out? A. Yes.

Q. What did you do with him?

A. I drug him off to the side of the road about 20 feet and let him lay there.

Q. Then what did you do?

A. Well, I immediately tried to help save what passengers there was in the bus.

Q. Can you tell us what you did about that?

A. Well, there was an emergency door on this bus that was locked and there was no way to get into it from the outside without breaking it in and I went back to the truck and climbed up on the back of the truck.

Q. That is the tractor part of your equipment, is it not? A. Yes, sir.

Q. Go ahead.

A. Climbed up the back side of the truck and went to the left side of it where we carried our wrecking bar sticking in this winch rig you spoke of.

Q. The rack?

A. Yes. Got it out and tried to pry the door open and couldn't with this rigging bar, so I broke out about three of the windows and pulled some of the passengers out.

Q. On which side did you break those out? [399]

A. On the bus?

Q. Yes.

A. It would be the left side of the bus with the bus headed north.



(Testimony of Robert B. Hawkins.)

Q. On the west? A. Yes, sir.

Q. On the back end of the bus?

A. Back end of the bus.

Q. How many passengers did you help out?

A. We helped get three out as well as I remember, and then I also returned to the truck and I thought about the fire extinguisher that I had and I got it, which was on the left side of the truck mounted over this gas tank to the headache rig, but the fire had gotten so intense around the side, the fire extinguisher that it had burned the hose of the fire extinguisher. There was only approximately a couple inches was left in the fire extinguisher and you couldn't do much good trying to squirt this fire fluid on this fire so I passed the fire extinguisher through one of the holes we knocked out with the bar in the window on the bus and it exploded itself and threwed that foamite.

Q. How many did you help out of that bus?

A. As well as I remember I believe it was three passengers.

Q. Your helper was unconscious all that time?

A. Yes, sir. [400]

Q. Did someone else arrive and help?

A. Well, there was several people arrived. I couldn't say just who they were. I believe one of them was this farmer that testified this morning, was it Mr. Sinns?

Q. Sinn.

A. I believe he was one. But I could not state as to who was there or how many. I was so busy

(Testimony of Robert B. Hawkins.)

helping these passengers out of this bus and hurt pretty bad myself that I didn't have much chance for observation.

Q. Did you go back at any time to look at tracks?

A. No, sir, I never did.

Q. Did you go into the hospital from there?

A. Yes, sir.

Q. And what was your condition as to your physical condition?

A. When I arrived at the hospital, I later after two hours found I had three vertebrae broken in my back and five ribs.

Q. Mr. Hawkins, was there anything looking back at it that you could have done after hitting that ice to stop that accident?

Mr. Lush: I object to that as a conclusion, your Honor.

The Court: Well, yes, you can inquire whether he can think of anything that he might have done to have changed [401] conditions or if he has to show you or that he knows that he did or that he could do.

Q. Have you told all you know about what happened immediately preceding the accident from the time you struck the snow and the ice?

A. As well as I can remember, yes, sir.

Q. There was nothing then that you know now that you left undone at that time that a trucker should do after hitting ice to avoid that accident?

A. No, sir, nothing I can think of.

Mr. Goppert: That is all.

Mr. Goppert: If the court please, I have the

(Testimony of Robert B. Hawkins.)

makings of this equipment that counsel wants to stipulate in the record and I will be glad to stipulate with counsel that the tractor portion of this equipment was 26 feet 6 inches in length, 7 feet 11 inches in width, 9 feet 3 inches in height to the top of the cab, weighing approximately 26,000 pounds. And that the trailer portion was 27 feet long, that is, the separate unit; 7 feet 11 inches wide, and the height of the bed was 50 inches from the bottom of the tires; and the unladen weight was 12,600 pounds; and that the over-all length of the two units, the two pieces of equipment when coupled together was, as a unit was 45 feet 2 inches.

Mr. Lush: We so stipulate, your Honor. [402]

The Court: Very well.

Mr. Goppert: That is all.

### Cross-Examination

By Mr. Lush:

Q. Now, Mr. Hawkins, if I understand your testimony correctly, you stated that when you first saw there was any snow or ice on the road was when you were opposite from certain trees on the west side of the road? A. Yes, sir.

Q. Now, looking at this plat can you identify which trees it was that you were opposite? I might help you by pointing out that this is the bridge, this is the driveway leading to the house on the west, this is the driveway leading to the Martin Lamb house here, this is the irrigation lateral, and that I think you referred to as a little hump. Now, with

(Testimony of Robert B. Hawkins.)

those land marks can you tell me what trees you were referring to?

A. I imagine it was these trees here.

Q. At the irrigation lateral? A. Yes, sir.

Q. And that was the first time you saw any ice and snow, is that right?

A. That is the first snow and ice.

Q. Had encountered coming down from Basin? Did you encounter wet road coming down from Basin? A. No, sir. [403]

A. And were there any spots of ice that you observed coming down from Basin? A. No, sir.

Q. Any spots of snow that you observed?

A. No, sir.

Q. And when you got to the crest of that irrigation lateral did the snow immediately start to cover the highway right there or was it ice for a ways or what was it?

A. It seemed to me like there was ice for a short distance and then snow on through the bridge and across it.

Q. Now then, if I get your picture correctly you were coming down clear blacktop with nothing on top of it, no snow, no ice, no nothing?

A. That is right.

Q. Then you hit some glare ice with no snow on top of that?

A. That is the way it appeared to me.

Q. It appears to you; is that the way it was?

A. Yes.

Q. And then you came and beyond that you later

(Testimony of Robert B. Hawkins.)

found by skidding that you had ice with snow on top of it?      A. Yes, sir.

Q. Now, would it be possible from your observations for anybody to walk down that road from the scene of the accident to the heighth of that lateral without finding that change in the road?

A. To walk down it?

Q. Yes, without being able to see that change in the character of the roadway?

A. I don't know about walking down it; I didn't walk [404] back up the road.

Q. Well, you see the same things with your eyes regardless whether you are driving or walking, don't you?      A. Approximately.

Q. Then would it be possible for anybody to walk back from the scene of that accident up to the irrigation lateral and not see the change in the road condition that you have testified to?

Mr. Goppert: That is objected to as being repetitions.

The Court: Yes, I think so.

Q. (By Mr. Lush): Where were you when you first saw the bus?

A. I imagine I was about possibly three blocks from it.

Q. From what?      A. The bus.

Q. From the bus, and where were you with reference to the positions on this map?

A. Right along in here, where these first trees.

Q. Right along by the irrigation lateral when you first saw the bus?      A. Yes.



(Testimony of Robert B. Hawkins.)

Q. You never saw the bus before that?

A. Not that I recall.

Q. Where was the bus then?

A. He was south of the bridge.

Q. Yes, here is the bridge. Where? About how far south?

A. I couldn't definitely state. It looked like we were [405] both about the same distance.

Q. It looked to you like you were both the same distance from the bridge. Now, as you came down from the north you do not recall having seen the bus before you topped the irrigation lateral, is that it? A. Yes.

Q. Now, you were driving a West Coast Special? A. Yes.

Q. And when the crash occurred the impact knocked the bus north of the bridge?

A. Yes, sir.

Q. You were still in the, at the wheel of the truck? A. Yes.

Q. Were you thrown in any direction?

A. Just forward against the wheel.

Q. Forward against the wheel?

A. Yes, sir.

Q. How about forward against the top?

A. No, sir.

Q. You were not? A. No, sir.

Q. How far is the top of that just from the top of that truck cab from the top of your head when you are riding?

A. I couldn't say. I imagine it was a foot.

(Testimony of Robert B. Hawkins.)

Q. You think it was maybe a foot?

A. Yes.

Q. Not any more than that?

A. No, I wouldn't say it was.

Q. And you estimate that your speed as you were coming over the top of that hump was 35 miles an hour?

A. As well as I could estimate it.

Q. Actually you were going considerably faster than that? [406]

A. No, sir.

Q. Why then why—the road was dry, was it not?

A. The road was what I would call a dry road.

Q. Then why were you holding your speed down to 35?

A. Well, this was a new outfit and that seemed that like that was the right speed to drive that outfit.

Q. And when you are driving this outfit how far above the pavement would your eyes be?

A. Sir?

Q. How high above the pavement would your eyes be when you are driving this outfit?

A. When you are sitting in the cab?

Q. Yes. That is where you drive it from.

A. Some people are taller. I might have been possibly seven feet.

Q. About seven feet you think?

A. From the pavement.

Q. The height of the outfit is agreed here to be nine feet three inches. Do you think your eyes were two feet three inches lower than the top of the cab?

(Testimony of Robert B. Hawkins.)

A. I am just merely estimating it; I don't know. I never measured it.

Q. Wouldn't your eyes be closer to eight feet high at that point? A. I couldn't say.

Q. You couldn't say? Do you think they would be between seven and eight feet?

A. I was estimating it when I said seven feet because I [407] really don't know.

Q. Now, did you observe any ice and snow on the road before you reached this driveway down here? A. I noticed the snow on the bridge.

Q. You noticed the snow on the bridge?

A. Yes.

Q. Where were you then when you noticed the snow on the bridge? A. Right here.

Q. At the irrigation lateral you noticed the snow on the bridge? A. Yes.

Q. Did you notice the snow between you and the bridge?

A. I noticed it extended north across the bridge some distance.

Q. For some distance but when you came across the top of that lateral you hadn't yet noticed it?

A. I hadn't noticed the snow.

Q. Where did you reach the snow?

A. I imagine about half way between the first tree and the bridge.

Q. Now, if the first tree is at the irrigation lateral and the bridge is 425 feet south, then you would say it was around 200 feet down the road from the irri-

(Testimony of Robert B. Hawkins.)

gation lateral? A. That would be my guess.

Q. And about a little over 200 feet north of the bridge itself? A. That is right.

Q. So that in your opinion there was no snow south, north [408] of the Martin Lamb driveway, is that right? A. That is the way I remember it.

Q. Was there snow north of this driveway here?

A. Well, I couldn't say as to that.

Q. Now, the first time you observed any snow ahead of you on the road was when you passed that irrigation lateral? A. Yes.

Q. Were you keeping a look out as you drove that truck ahead?

A. You naturally have to keep ahead.

Q. How far ahead?

A. That is according to your road how far ahead you can see. You have to look ahead as a rule far enough to try to drive at a reasonable speed.

Q. Now, looking south down the road toward Worland from this irrigation lateral you can see down the road a long ways, can you?

A. I believe you can see quite a ways.

Q. And did you look down ahead of you?

A. Yes, sir. That is when I seen the bus.

Q. That you testified was when you went over the irrigation lateral?

A. That was the first chance I had of seeing down that far.

Q. Couldn't you see down that far from back farther? A. Not too far. [409]

Q. Why not?

(Testimony of Robert B. Hawkins.)

A. Well on account this was on the other side of that rise to start with.

Q. How high is that rise?

A. I couldn't say. I know there is a rise there in the road.

Q. Are you familiar with maps? If this map represents one foot of rise here, that is one foot rise for each one of those little blocks, then from the lowest point back here to the top of that rise we actually have only slightly over four feet, isn't that true? Doesn't the map show just slightly over four foot rise between this spot back here and the high point there?

A. I don't know as to that, what the height would be.

Q. Well this is drawn to scale, is it not? This scale is one inch equals ten feet on a horizontal, and these all represent one foot. So the lowest point on the road back here visible on this map was not as low as the height your head was above the pavement, was it, if your head was seven feet above the pavement? A. I don't know.

Q. From the low point visible on this map you could always look over the top of that hill and see the road ahead, could you not? Well isn't that the true fact with reference to the road—never mind the map—couldn't you always see ahead over the top of that hill and see the road and the [410] character of the road ahead of you? There isn't any place visible on this map you couldn't have



(Testimony of Robert B. Hawkins.)

looked ahead of you and seen the road was covered with snow there over the top of that hump?

A. I could see the road was covered with snow the other side of the bridge.

Q. The answer to that was you could see there was snow beyond the bridge, is that right?

A. Yes.

Q. And you could see that from any place visible on this map, is that true?

A. I couldn't say as to that whether anywhere on that map.

Q. Well you could see from a long distance back that the road beyond the bridge was covered with snow, could you not?

A. I could see some distance back.

Q. Now what did you do with reference to reducing your speed before you came over the top of that hill?

A. I cut it down.

Q. To what?

A. 35 miles.

Q. And how fast had you been driving?

A. Well I couldn't have been driving over 45 and possibly not over 40.

Q. So you dropped your speed 5 miles an hour?

A. Yes.

Q. Now didn't you just tell me 35 miles was the right [411] speed to drive that vehicle and that is why you drove it?

A. 35 to 40.

Q. But before you came over the hill you were going 40?

A. It was possible to go 40.

Q. I asked you if it was possible you were going

(Testimony of Robert B. Hawkins.)

faster than that and you answered no you thought that was the speed to drive the vehicle?

Mr. Goppert: That is objected to as being repetition and argumentative.

The Court: Yes, I think so.

Q. (By Mr. Lush): Now, Mr. Hawkins, you have testified that in the past on occasions when driving a truck over these roads that you have come upon ice and skidded without ever touching your brakes, is that right?

A. Yes, it is possible.

Q. I didn't ask you if it is possible. Has that been within your experience?

A. Well I can't remember as to that. It could have happened.

Q. And if you do skid without touching your brakes because you are on icy road, is the proper thing to do then to apply your brakes?

A. Well it is according to where you are at.

Q. What was the condition of the road at the place where the Highway Patrolman inspected your brakes up at Basin? [412]

A. It was good.

Q. Where he inspected your brakes?

A. The road was good.

Q. Dry? A. I would say so.

Q. What experience had you had driving truck on that Highway 20 north of Worland?

A. Sir?

Q. Had you had previous experience driving truck over that highway north of Worland?

(Testimony of Robert B. Hawkins.)

A. I have been over it at times.

Q. Over what period of time?

A. Well, I would have to figure that. Over a period of about eleven months I had had occasion to make trips up over it. I couldn't say how many or how few.

Q. Could you give us an estimate?

A. No, I couldn't give you an estimate. I have been over it.

Q. Do you know the road?

A. Comparatively well, yes.

Q. Are you familiar with the system of highway markers used in Wyoming?

A. Well I use to be. I couldn't say I am now. I have been gone.

Q. Were you at that time?                      A. Yes, I was.

Q. Does the State of Wyoming put out signs as you approach narrow bridges?

A. I think so.

Q. Did you see any such sign at the approach to this [413] bridge?

A. I don't remember of it.

Q. Actually this bridge was not a narrow bridge, was it?                      A. There is narrow bridges.

Q. That doesn't answer my question. I said this is not a narrow bridge, is it?

A. Well, I don't suppose it could be classed as a narrow bridge.

Q. Actually it is wider than the blacktop, is it not?

A. I never did measure the bridge.

(Testimony of Robert B. Hawkins.)

Q. Now what was the travel condition as you drove over that road, Mr. Hawkins? Did you meet many vehicles?

A. I don't recall whether I did or not.

Q. You don't know whether the travel was heavy or light?

A. It don't seem to me like there was very much traffic over it as I remember it but I couldn't say positively.

Q. Now at what speed do you ordinarily drive a rig such as the one you had there over icy roads?

A. Well if I knew I was on ice I would be driving pretty slow.

Q. Well if you knew you were on ice at what speed would you drive a rig of that kind?

A. Whatever speed I deemed as safe; that could vary.

Q. It could vary?

A. Yes, and it would also vary on the gear you were in.

Q. What gear were you in? [414]

A. I was in fourth gear.

Q. Out of how many gears?

A. Well in the transmission out of five.

Q. Out of five. You had five speeds forward with the transmission, is that right? A. Yes.

Q. And how many do you have in the differential? A. We had three and an auxiliary.

Q. Three and the auxiliary? A. Yes, sir.

Q. And does the auxiliary pull you faster than the regular transmission?

(Testimony of Robert B. Hawkins.)

A. Not necessarily.

Q. Are they higher gears?

A. They are lower.

Q. They are lower gears?                      A. Yes.

Q. So you were in the next highest possible speed of the truck, is that right?

A. No, I was in fourth on direct.

Q. Fourth in direct?                      A. Yes.

Q. And there were five direct gears, is that right?                      A. Yes.

Q. Well you said your auxiliary gears were lower than the others?                      A. Yes.

Q. Now what other higher gears would you have than the one you were in?

A. You would have several. You have a combination there. If you know how to shift your gears, you can get half a gear up or down with your auxiliary, work it in a combination. [415]

Q. Where were you on this map when you first skidded?

A. Just after I passed that bunch of trees.

Q. And you think that is the irrigation lateral? The irrigation lateral—there is the first tree—first bunch of trees, now which?

A. Somewhere along the trees.

Q. Somewhere there and you don't know just where, and were you out of control at the time?

A. At the time I skidded?

Q. Yes, when you first skidded?

A. No, I—when I first applied the brakes to the



(Testimony of Robert B. Hawkins.)

trailer it didn't seem like I could check them because I didn't have any load on the trailer and I couldn't get any traction so, of course before that I didn't realize I was on ice until I did apply the brakes when I couldn't do any good at checking it and that is when I tried to check it with my foot brake and that is when it apparently hit some rough places on that road, ice, snow, or something and started the trailer into a swerve as well as I remember.

Q. Do you have the idea that your trailer went into a swerve before your tractor did?

A. Yes, sir.

Q. And where were you when that trailer went into the swerve?

A. I was somewhere along them trees.

Q. Those trees extend pretty steadily from the irrigation lateral down to the scene of the accident, do they not? [416]

A. I really couldn't say. I never looked at the time and I haven't been back down there since.

Q. Can you place your position by anything other than those trees?

A. No, that was about the only thing that I had in my mind as to where it started to skid.

Q. You have driven over the roads in Wyoming before in the winter?

A. Yes, sir.

Q. And you have driven from dry highway on to icy highway before?

A. Well I don't just recall going on to it as abrupt as I did on that particular place.

(Testimony of Robert B. Hawkins.)

Q. Where did you go after you left the hospital in Worland?      A. Where did I go?

Q. Yes.

A. You mean when I left the hospital?

Q. Yes.

A. I went to the hotel in Worland.

Q. And how long did you stay there?

A. I stayed there over night until some time after noon the next day.

Q. And where did you go from there?

A. I went to Casper, Wyoming.

Q. And how long did you stay in Casper?

A. After I got in Casper? [417]

Q. Yes.

A. Well I was—I went to the hospital and I don't remember just exactly when I got out and I was there I guess, approximately I think until some time in June.

Q. And where did you go from Casper?

Mr. Goppert: Your Honor, we object to this line of questioning as irrelevant and not proper cross-examination.

The Court: Well you covered that in your direct examination. You traced him to some place out in Washington. Now he is retracing on cross-examination. Overrule the objection. Proceed.

A. Where did I go when I left there?

Q. Yes.      A. Oklahoma City.

Q. Did you continue to work for Manning?

A. No, sir.

(Testimony of Robert B. Hawkins.)

Q. When was the last day you worked for Manning?

A. I couldn't definitely state that. I never kept any record of it.

Q. Did you ever do a day's work for him after that accident?

A. Yes, I went back on light work.

Q. As you came down the road from this driveway to the point of impact what was the position of your truck on the road, was it facing north and south or was it facing east and west? The truck part, the tractor part, not the trailer? [418]

A. The tractor?

Q. Yes.

A. This driveway or this driveway?

Q. I think you said you started to skid at the driveway on the west side of the road, did you not? That would be this driveway, the one where you started to skid?

A. Well when I first went into a skid I was on the west side of the road.

Q. Yes. And what was the position of your tractor as you came from that point down to the point of the accident?

A. It went across the road to the east side.

Q. And was the tractor facing north and south or east and west or northeast and southwest or what was the position of the tractor?

A. The tractor as well as I remember was com-

(Testimony of Robert B. Hawkins.)

paratively north and south until just before the impact it started to come back from the east side to the west side of the road.

Q. In other words, you were going generally north and south with your tractor up until just a few seconds before the impact?

A. A very few seconds.

Q. You didn't skid sideways down the road at all?

A. It might have been in a very small, but as well as I can remember it seemed like it straightened out comparatively straight and then turned across the road to the opposite side just before the impact. [419]

Q. Did you keep your eyes on the bus as you were sliding down the road?

A. Well I could see it.

Q. And where was the bus to the best of your recollection when you started sliding?

A. Well he was approaching the south side of the bridge.

Q. He was approaching the south side of the bridge when you started sliding here, is that right?

A. Yes.

Q. And there was no visible place for him to go except across the bridge, was there?

A. I couldn't say as to that. I don't know.

Q. Is there any reason why you couldn't have driven your rig off the lefthand side of the road and up into the yard?

A. I couldn't get those front wheels turned.

(Testimony of Robert B. Hawkins.)

Q. Weren't you going in a northerly and southerly direction?

A. When you are sliding on that ice you can't control those wheels.

Q. With your rig sliding in a northerly and southerly direction you mean you couldn't turn off that road and go up into the yard?           A. No.

Mr. Lush: That is all.

### Redirect Examination

By Mr. Goppert: [420]

Q. How old are you?           A. Forty-eight.

Q. You were forty-six at the time of the accident?           A. Yes.

Q. What Highway Patrolman was it that inspected your outfit at Basin, if you know?

A. Keith Ward.

Q. You stated that you never measured that bridge; did it appear as you approached it from the north before you applied any brake to be narrow?

A. Yes, it did appear to be.

Q. And did you attempt or were you going to try to beat somebody to the bridge?

A. No, sir, I was going to try and stop and give the bus the bridge.

Mr. Goppert: That is all.

Mr. Lush: Mark that for identification.



(Testimony of Robert B. Hawkins.)

Recross-Examination

By Mr. Lush:

Q. Calling your attention to Plaintiff's proposed Exhibit No. 17, I will ask you is that a fair representation of what you saw as you came in a southerly direction with reference to the bridge except for the snow?

A. I couldn't say because I don't know how that picture was taken. [421]

Q. Well does it look like the scene looked at that time except for the condition of the snow on the road?

A. I couldn't definitely answer yes or no to it. It could be the way it looked. I couldn't say whether it looked like that or not.

Mr. Lush: That is all.

Mr. Goppert: That is all.

KEITH WARD

was called as a witness for defendant, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Jameson:

Q. Will you state your name, please?

A. Keith Ward.

Q. Where do you live?

A. 718 Wall Street, Chico, California.

Q. And what is your present occupation?

A. Police Officer, Chico Police Department.

(Testimony of Keith Ward.)

Q. How long have you been a Police Officer in Chico?

A. In Chico for approximately two years.

Q. And prior to the last two years where were you?

A. I was employed as inspector on the Wyoming Highway Patrol.

Q. And prior to being inspector were you employed by [422] the Wyoming Highway Patrol?

A. I was employed as Patrolman.

Q. How long were you employed as Inspector?

A. Nine months.

Q. How long as Patrolman?

A. A year and two months.

Q. Will you tell the court the respective duties of the Patrolman and Inspector?

A. A Patrolman handles automobile accidents, crime, and does a certain amount of work with commercial vehicles as to permits and safety inspections, and an Inspector's work is primarily concerned with commercial vehicles. An Inspector has a trailer house and in substance has a mobile port of entry for all commercial entries as to proper permits and safety operation of commercial vehicles. We assist Patrolman whenever requested and took care of any emergencies that arose that we were called on where a Patrolman wasn't available to.

Q. Prior to your employment by the Highway Patrol of Wyoming what did you do?

A. Three years, United States Army.

(Testimony of Keith Ward.)

Q. You were employed after your discharge from the Army as a Highway Patrolman?

A. Yes.

Q. Then during the three years you were employed as Highway Patrolman and Inspector did you have occasion to [423] investigate a large number of accidents in Wyoming?

A. Yes, I had quite a large number of accidents.

Q. And were you called on to investigate an accident on December 27th, 1946?

A. Yes, I was.

Q. The accident in which this action is involved?

A. Yes.

Q. Now, Mr. Ward, where did you first see either of the vehicles involved in this accident?

A. When I was working approximately a mile north of Basin on Highway 20 I had a checking stop setup there, and the town Marshal from Basin came out and told me approximately 3:05 in the afternoon that there had been an accident involving a Burlington bus and a car about nine miles north of Worland and they wanted to know if I would come up and investigate as they were unable to get hold of a Highway Patrolman. I said yes I would go and asked him if he would like to come along and he said he would so we got in my car and started for the scene of the accident.

Q. Now, Mr. Ward, prior to that time had you inspected the truck of the Manning Company that was involved in this accident?

A. Yes.

Q. I think we will go into that before we go

(Testimony of Keith Ward.)

into the accident itself. Will you tell us about that inspection?

A. Well Mr. Hawkins drove his truck and trailer, the International West Coast Special, into my checking station [424] oh, approximately in the neighborhood of forty-five minutes before the accident occurred, and he came to a sliding stop at my checking station, as all drivers do who are familiar with my way of working did, and got down from his cab. I checked his truck for a permit for operation as it was a new vehicle. I went around and checked the brakes, checked the brake marks on the road to make sure all brakes were holding, which they were. I checked his brake connections from the tractor to the trailer, and for flags and flares, just a routine inspection we generally run.

Q. Now what would you say with respect to the condition of the brakes and the brake connections from the examination you made at that time?

A. Well the brakes were connected from the tractor to the trailer; if they hadn't been, I would have stopped his vehicle from operation.

Q. If you found anything mechanically wrong with the truck, what would you have done?

A. I would have taken his rig up and based it. He would have had to repair whatever is wrong before he could go on. If his tractor was defective, he would have to leave it. It was in proper working order.

Q. Did I understand you to say you checked all the brakes on both the tractor and the trailer?

(Testimony of Keith Ward.)

A. Yes.

Q. And what did you find with respect to the condition [425] of the brakes on both the tractor and the trailer?

A. They seemed to be in the proper working order. At least I watched him stop in front of my car. It was the only truck on that particular stretch of highway at the time. I watched his stop and observed the brakes were and the connections were properly made. I observed that later.

Q. What was the condition of the highway at that point?

A. The highway at that point was dry.

Q. Now then I believe you said at about 3:05 you received this call from the town Marshal of Basin, and then that you asked him if he wanted to accompany you to the scene of the accident and he did so, is that correct?

A. He said yes he would like to go along.

Q. Now will you next then, Mr. Ward, describe to us your trip from that point, which I understand is one mile from Basin, is that correct?

A. A mile north.

Q. A mile north. Your trip from a mile north of Basin to the scene of the accident?

A. Well from a mile north of Basin the road was clear. The road was clear from that point down to very close to the scene of the accident. The road was clear and dry. There was snow on the shoulders but the oilmat was clear up to just a short distance from the scene of the accident.



(Testimony of Keith Ward.)

Q. Could you fix that point with reference to any natural object, Mr. Ward, or with reference to the plat which is marked [426] Plaintiff's Exhibit 1?

A. Well it is approximately 400 feet north of the scene of the accident that I first noticed it at the start of this line of trees because the wind evidently did not hit in there to blow the snow clear of the road.

Q. And that is where you first observed snow and ice on the highway, is it?

A. That is where it first came to my attention.

Q. Well from the point you traveled from a mile north of Basin to that point the road was clear?

A. The road was clear and I made good time coming down.

Q. What speed did you travel for that distance?

A. My speedometer—I had a four speed 1946 Ford Panel truck. The speedometer only goes to 60 miles an hour. I traveled mostly at 60 or a little better all the way down.

Q. Mr. Ward, do you recall anyone passing you on that trip to the scene of the accident?

A. Yes, Dr. Walker passed me.

Q. And about what speed was he traveling?

A. He passed me going pretty fast.

Q. You were going how fast?

A. I was going an even 60 when he passed me.

Q. Now, Mr. Ward, you traced it down to a point some 400 feet north of the scene of the accident?

A. Right.

(Testimony of Keith Ward.)

Q. Will you tell us what happened so far as your travel [427] between that point and the point of the accident?

A. I started to slow down before I got to the ice and I was going, oh, I would say 40 to 45 when I got on the ice, and Dr. Walker was stopped in front of me and I couldn't stop without hitting him and I had to take off to the left and go around him up to the scene of the accident.

Q. What was the condition of the highway there?

A. It was found there there was snow and ice on the highway, snow in some parts was knocked loose; it was more or less uneven looking, rough and slick.

Q. Now did you say you slipped or skidded or something of that kind?

A. I did, yes. I had to swerve left of the Doctor's car and I had quite a time stopping my car.

Q. You had a difficult time stopping your own car?      A. I did, yes.

Q. Now, Mr. Ward, what did you first do after you arrived? First of all where did you stop your car?

A. I stopped my car, oh, it would be about 25 or 30 feet north of the tractor.

Q. On which side of the highway?

A. On the lefthand side. I left it there. There was no particular danger there because no traffic was going through.

(Testimony of Keith Ward.)

Q. And then will you just go on from there and tell us [428] what you did at the scene of the accident?

A. The first thing I done I got out of my car and went back to the Doctor's car and told him to keep his vehicle down to legal speed limit. And he said he was taking a nurse to the hospital. And I said regardless of that you do not have an emergency vehicle and it would be advisable to you to keep it down to at least 60. Then I returned up to the bus and Sheriff Nicola was standing at the back of the bus and I asked the Sheriff how many he thought were still in the bus and he said, I don't know, about two. I said, are there any injured still at the scene? He said, I believe there's somebody at the farm house. I believe it would be this one.

Q. Would that be what was described as the Lamb farm house or Piel?

A. Piel. This is Lamb's here.

Q. Yes. A. This is Piel.

Q. Then it was the Piel farm house?

A. Yes. I had two first aid kits in my car and I went to the Piel ranch to see if I could be of any help to whatever injured there were. And I got inside of the farm house and Mr. Brownell was there and the Doctor from Worland was there at the time giving him plasma I believe. Since the Doctor was there there was nothing I could do in the way of first aid. The Doctor was handling the case and he was the [429] only injured man left there. I volunteered the services of my panel truck as an ambulance as I had a bed in the back of the

(Testimony of Keith Ward.)

panel truck, and the Doctor said no they couldn't move him and they were bringing an ambulance out and it would be a little while before they could move him. So I went back to the scene of the accident and the Sheriff and I while waiting for the fire to die down so we could move the bodies there, made an investigation of tracks, measured the tracks both north and south of the accident.

Q. You say you and the Sheriff measured the tracks north and south of the accident?

A. Yes, and the position of the vehicles.

Q. First of all will you tell us briefly the position of the vehicles?

A. Well the bus was approximately three feet north of the bridge. The rear end of it was 5 or 7 feet from the west side of the road and the majority of the bus was along the south edge of this little road in here on the east side. And the end of the bus was there; it wasn't in the ditch. We walked along the edge; it was right on the very edge. We had to walk down on the slope of the ditch to get to the front door to remove the bodies. And the tractor was 18 inches from the bus with the front end pointing up in this direction; that would be southwest and the rear end facing northeast. The trailer had been disconnected from the truck and was [430] down here in the ditch with the nose end of it just about it would be a little on this road down here.

Q. Then, Mr. Ward, you said that you and the

(Testimony of Keith Ward.)

Sheriff together examined the tracks both north and south of the scene of the accident?

A. That is right.

Q. Calling your attention to Defendant's Exhibits Nos. 5 and 6, I will ask you if they correctly portray the tracks north of the scene of the accident as you recall them?

A. Well they are not as clear as they were when I was there but generally I would say they portray.

Q. Generally they are the same but the tracks were clearer when you examined them at the scene of the accident?

A. They seemed to be deeper.

Q. The tracks seemed to be deeper than they show on these two pictures?      A. Yes.

Q. Now, Mr. Ward, could you trace those tracks to any particular point?

A. Well the tracks extending from the back wheels of the tractor, the drive wheels of the tractor diagonally across the road we could trace those back approximately, we couldn't trace them directly to the back wheels of the truck because the fire melted them off, but right in line with the back wheels approximately 150 feet. I paced that. That was 50 paces, three foot paces.

Q. And from your observation there were you able to form [431] an opinion as to which wheels had made those tracks?

A. Yes, sir, it is my opinion that the back wheels of the tractor made the deep impression, the dual track in the road.



(Testimony of Keith Ward.)

Q. Yes, those are the tracks you described which are shown in Defendant's Exhibits Nos. 5 and 6?

A. Correct.

Q. Now did you observe there any tracks made by the front wheels?

A. No, I couldn't find no evidence of any tracks by the front wheels at all.

Q. And what would that indicate with respect to the front wheels?

A. That would indicate to me he had his front wheels turned going with the skid attempting to bring it out and that the wheels were still turning and that they were not locked.

Q. Now on the basis of the examination you made and the testimony you have given here now on these vehicles could you form an opinion as to whether the wheels were locked?

A. I would say they were not locked because if they had been locked, the front wheels regardless which way they had been turning would have made an impression on that snowy surface.

Q. And you didn't find any such impression?

A. There was no impression of the front wheels at all. [432]

Q. And did I understand you to say it was your conclusion from that the front wheels turned with the skid?

A. Yes, they were slightly turned that way when I arrived.

Q. Now will you describe for us, Mr. Ward, the

(Testimony of Keith Ward.)

marks on the highway you observed south of the scene of the accident?

A. Between this driveway and a point just a few feet from the Bridge there is a dual mark on the shoulder of the road in the soft snow.

Q. When you say "this driveway" that is the driveway 165 feet from the, marked 165 feet from the bridge?

A. It was somewhere in between here.

Q. Somewheres in that distance?

A. Yes. Closer to the bridge than it was the driveway.

Q. And what did you observe there?

A. Well there was a dual track there as evidence a dual wheeled vehicle had traveled for a distance down the side of the road on the extreme edge and part of the shoulder of the road where the soft snow was you could pick up that track.

Q. And where did those tracks end, that is, at the north?

A. Right about at the bridge.

Q. Were you able to form any opinion, Mr. Ward, as to what vehicle had made those marks?

A. Well I couldn't say for sure but it was probably the bus. [433]

Q. You couldn't be positive of that?

A. I couldn't be positive because it was not distinct enough due to the heat on the bridge and the fact that the track it didn't appear to be a skid mark to me; if it had been a skid, it would have

(Testimony of Keith Ward.)

extended on to the bridge but it probably was the bus.

Q. Mr. Ward, following the accident did you drive into Worland?

A. Yes. After we conducted our investigation we removed four bodies and part of a fifth and put them in the back end of my truck and went around the accident, and backed up here and asked the Sheriff if he had a wrecker coming to remove the vehicles and he had, and I drove from there to the undertaker's establishment in Worland where I unloaded the bodies.

Q. What time did you leave the scene of the accident for Worland?

A. I don't recall as to the time.

Q. Will you describe for us the condition of the highway between the scene of the accident and Worland, particularly with reference to whether there was any snow or ice?

A. Well there was hard packed snow from the scene of the accident right through right into Worland. It was hard packed snow and it was rough and slippery and dangerous road to travel especially with an outfit like I had.

Q. You had a panel truck? [434]

A. I had a panel truck but it has truck springs.

Q. About how fast did you travel?

A. I don't think I exceeded 30 miles an hour, 25 the majority of the time.

Q. Mr. Ward, what would you say was a safe

(Testimony of Keith Ward.)

speed from the point a mile north of Basin to a point some four to five hundred feet north of the scene of the accident?           A. From Basin?

Q. Yes.

A. To that point, well the legal speed there would be 60 miles an hour.

Q. And would you say that would be a safe speed for that part of the highway?

A. That was a safe speed; I maintained it all the way down.

Q. And what would you say was a safe speed from the scene of the accident into Worland?

A. Into Worland I would say not over 35 miles an hour.

Q. Did you prepare a report of your investigation, Mr. Ward?           A. Yes, I did.

Q. And will you state how that report was prepared?

A. Well that report was prepared by myself, the Sheriff, Under-Sheriff and Patrolman Wickam from combined investigation of the whole group. We got together in the Sheriff's office the morning after the accident. The night before we had [435] been to the hospital and questioned both the drivers of the vehicles involved and as many witnesses as we could find that could talk and that had actually seen enough to be of any value as to what happened and we took those statements and combined those statements and our own investigations of tracks and conclusions into that report.

(Testimony of Keith Ward.)

Q. Then the report was typed and your three names were typed on the report?

A. I typed the report and the three names on the original report.

Q. Calling your attention to Plaintiff's Exhibit No. 10, I will ask you if that is a photostatic copy of the report that you prepared of your investigation?

A. Yes, this is a photostatic copy of that report.

Q. Then after the report was prepared what did you do with it?

A. We sent it in to Cheyenne.

Q. In to the Highway Patrol? A. Yes.

Q. Did you do anything else with it?

A. Yes, we showed the report to the County Attorney of Washakie County.

Q. And that was all? A. That was all.

The Court: Gentlemen, it looks as if we are not going to be able to finish this case tonight. How many more witnesses have you got? [436]

Mr. Jameson: This is our last witness.

The Court: Do you have some rebuttal?

Mr. Lush: I think only one, your Honor, but possibly two.

Mr. Jameson: It is perfectly agreeable to us, if the court please, to stop now.

The Court: I think perhaps we had better. We will adjourn until tomorrow morning at 10:00 o'clock. (5:10 p.m.)



(Court resumed, pursuant to adjournment, at 10:00 o'clock a.m. on May 19, 1949, at which time all counsel and plaintiff were present.)

The Court: Gentlemen, have you found a few more witnesses so you will take up the whole forenoon?

Mr. Jameson: If the court please, we are on our last witness.

The Court: How many have you got? You had one last night in rebuttal?

Mr. Lush: I think two, your Honor, but they will both be exceedingly short.

The Court: Can you finish by 11:00 o'clock? You know, if I were to rigidly enforce the rule, I would adjourn this case over because we have a jury here and a criminal case set for this morning, and I realize you gentlemen come from a [437] long distance and I don't want to embarrass you or handicap you in any way. I will take a chance on giving you an hour but I would expect a little more expedition than we had yesterday. It dragged along a long time yesterday with considerable repetition in the examination of witnesses. I don't blame you for that. I suppose we have all been guilty of that in days gone by but I will keep the jury here and I will hear this case if you will finish in an hour. You may proceed.

## KEITH WARD

resumed the stand and testified as follows:

## Direct Examination

(Continued)

By Mr. Jameson:

Q. Mr. Ward, at the close of the testimony yesterday I was interrogating you with respect to a photostatic copy of the report you made to the Wyoming Highway Patrol. I now hand you an instrument marked Defendant's Exhibit No. 18, and will ask you if that is a photostatic copy of the same report? A. Yes, it is.

Mr. Jameson: I might say, if the court please, we are offering this in evidence for the reason it is a little larger and we think clearer.

The Court: Any objection?

Mr. Lush: No objection. [438]

The Court: Very well.

(Whereupon said Defendant's Exhibit No. 18, being photostatic copy of accident report, offered and received in evidence, is a part of this record.)

Q. (By Mr. Jameson): Mr. Ward, calling your attention on page 2 of the Defendant's Exhibit 18, I will ask you if you drew the diagram?

A. Yes, sir.

Q. And in particular did you draw the tracks and the vehicles?

A. I drew the entire document.

(Testimony of Keith Ward.)

Q. Did you show that to the Sheriff and to Mr. Wickam, the other Highway Patrolman?

A. Yes.

Q. And did they agree that was a correct representation of the tracks and the vehicles as you saw them at that time? A. They did.

Q. Now calling your attention to the route of the vehicle No. 2, and particularly that part of it toward the south toward the bus, what have you to say with reference to what that shows with respect to whether the vehicle was coming out of a skid?

A. Well the curve at the end of the track indicates the vehicle, the tractor, vehicle No. 2, was coming out of the skid and regaining control and returning to his own side, the west side of the road. This was substantiated by the [439] statements of the witnesses; they agreed on that point that it was returning to its own side of the road at the time of the impact.

Q. There was some testimony, Mr. Ward, to the effect that at a certain point there was a panel truck driven by the Highway Patrolman that came from the north on the highway; as I understand it you were driving this panel truck?

A. That is correct.

Q. And what kind of vehicle did the other Highway Patrolman have?

A. He had a Ford four-door sedan.

Q. So that you had the only panel truck driven by a Highway Patrolman? A. Yes.

Q. First of all will you just tell us very briefly

(Testimony of Keith Ward.)

the course your vehicle took after you arrived at the scene of the accident?

A. At first I parked near the tractor, and then I backed it up into the farmer's yard, the road back, second road back, and then I backed it up to the back end of the tractor to load the bodies, and I went around the scene of the accident to the highway south of the bridge and backed up to ask the Sheriff a question and then straight on forward into Worland.

Q. Now as I understand it the first time you took your vehicle south of the bridge was after you had completed your investigation and had loaded the bodies, is that correct? [440]

A. That is correct.

Q. And then you went to the south side of the bridge and after that you backed toward the bridge to ask the Sheriff some question? A. Yes.

Q. Approximately how long would that be after you arrived at the scene of the accident?

A. Pretty close to an hour.

Q. You have been over this highway other times, have you, Mr. Ward? A. Yes, I have.

Q. I want to ask you as you traveled southward on the highway and particularly come over this rise in the highway to the north and looked toward the south what impression you have of the bridge with respect to whether it is a wide or narrow bridge?

A. Well it has the impression of a narrow bridge due to the fact there's a turn slightly and the road coming south goes straight up approximately to the

(Testimony of Keith Ward.)

bridge. The bridge sets slightly with the north end to the east. It has the look of a narrow bridge due to being set at an angle to the highway.

Q. Can you illustrate that on the plat, Plaintiff's Exhibit 1, very briefly?

A. The road coming in to here is straight. The road from about this point takes a curve. Coming on to the road you see the bridge is set on this curve instead of on this straight stretch of road. In other words, coming down on this [441] stretch north the bridge is set at an angle to this part and it sets straight with this part. The angle is very slight.

Q. Where were you on the highway when you first saw the truck and bus as you came to the scene of the accident?

A. Well that is rather hard to place. I was back, oh, five or six hundred feet approximately. I can't say for sure. I don't know just exactly when I did see it.

Q. I believe you said at some time before that you had seen the smoke?

A. I had seen the smoke.

Q. Did you go over that road again that night, Mr. Ward?

A. Yes, we had to after questioning the witnesses at the hospital, especially, Mr. Brownell. We were still three passengers short on the bus and we went back around midnight that night to search the bus for more bodies and we found two.

Q. And how far did you go on that trip?

A. Well I went all the way to Basin because we



(Testimony of Keith Ward.)

all stopped at the scene, the rest of the boys were in the Sheriff's car and I took my panel truck and I said as long as I am this far I am going to Basin and I will see you in the Sheriff's office at nine o'clock in the morning to make out the report.

Q. What would you say with reference to the condition of the highway between Worland and the scene of the accident as compared with the afternoon? A. It was about the same.

Q. And what about the highway north from the scene of [442] the accident to Basin?

A. Well from just a short distance north of the scene of the accident I would say as I said yesterday approximately four hundred feet from there to about Manderson it was about as clear as it was. It was unchanged from Manderson to Basin and had started to storm.

Q. It had stormed between Manderson and Basin? A. Yes.

Q. About how far is Manderson from the scene of the accident?

A. It is a good 10 or 12 miles.

Q. Then you came back to Worland the next morning? A. I came back the next morning.

Q. What was the condition of the road the next morning?

A. There was snow in Basin but the middle stretch a little this side of Manderson to the scene of the accident was clear and basically unchanged from the way it was the day before.

(Testimony of Keith Ward.)

Q. And all the way into Worland was about the same as the day before?

A. It was rough hard packed snow.

Q. You mentioned yesterday, Mr. Ward, that the town Marshal of Basin went with you to the scene of the accident?

A. Yes.

Q. Do you know whether the Marshal is still living? [443]

A. As I understand it the Marshal is dead.

Mr. Jameson: You may cross-examine.

### Cross-Examination

By Mr. Lush:

Q. Mr. Ward, is that a fair representation of the vehicles you met at the bridge as you come from the north to the scene of the accident?

A. Yes, I would say that is very good.

Mr. Lush: We offer in evidence Plaintiff's Exhibit No. 19.

Mr. Jameson: No objection.

The Court: It may be received.

Whereupon said Plaintiff's Exhibit No. 19, being a photograph of the scene of the accident, offered and received in evidence is a part of this record.

Q. (By Mr. Lush): Now, Mr. Ward, if I understood your testimony yesterday correctly, you said that these were, that is, the tracks that were marked 1 and 2 on Plaintiff's Exhibit No. 5, that you examined, are those the tracks to which you were referring in your testimony yesterday?

A. The tracks I am referring to it is hard to

(Testimony of Keith Ward.)

tell from this picture. The tracks I was referring to it is hard to [444] tell from this picture; it isn't very clear. The only tracks I believe I testified to was one set of tracks.

Q. Just one set of tracks?

A. Yes, to the north.

Q. Didn't you clearly state yesterday that you were testifying with reference to two sets of tracks? And Mr. Goppert asked you if there were three, Mr. Jameson asked you if there were three sets of tracks there, and you said that you knew that the vehicle had its front wheels turned and they were not locked because there was no third set of tracks?

A. When I say one set of tracks the set of tracks made by the dual wheels of the tractor.

Q. The one set means two tracks, is that correct?

A. One set.

Q. Set of tracks?

A. Tracks.

Q. Means two tracks?

A. Two parallel tracks close together made by the dual wheels of the tractor.

Q. Now there was no third set, there was no other track that showed the same general pattern down there?

A. Not that I could actually see to the vehicle.

Q. And from that you concluded that the front wheels were not locked and none of the brakes were locked on the vehicle, is that correct?

A. That is correct. [445]

Q. Now in what position would that vehicle go down the road in order to make those tracks? What

(Testimony of Keith Ward.)

was the general attitude of that vehicle, was it facing north and south or east and west to make the tracks you saw?

A. I wouldn't say it was facing either north or south or east and west; it was on an angle.

Q. About what angle?

A. The front end of the vehicle would be going southwest and the rear end of the vehicle would, of course, be pointed, the rear end would be pointing northeast.

Q. And the vehicle would be sliding in a generally southeasterly direction?

A. That is correct.

Q. At that time——

A. It was crossing the highway.

Q. It was crossing the highway. About how far would you say that the vehicle was in that general position sliding in that general position?

A. You mean how long were the tracks?

Q. Yes. How many feet approximately?

A. 150 feet.

Q. 150 feet. Now, if I understand your testimony, from the examination of the tracks your reconstruction of this accident places the vehicle that Hawkins was driving that the tractor with its nose end pointing southwest, its rear end pointing northeast and sliding sideways down the road [446] across the road from the west to the east and in a generally southerly direction?

A. It slid diagonally across the road.

Q. That is your testimony?

A. Just down at the last of the track it makes

(Testimony of Keith Ward.)

a slight curve to straighten up as shown in my diagram.

Q. Did you hear Mr. Hawkin's testimony yesterday?      A. I believe I did, yes.

Q. Didn't Mr. Hawkins testify that as his vehicle came down the road it was pointed in generally a northerly and southerly direction?      A. Yes.

Q. Just a little to the east?      A. I did.

Q. Then your conclusion from this is that the vehicle was pointing in a manner other than that described by Mr. Hawkins?

A. That was my reconstruction of it from the tracks.

Q. And you are of the opinion Mr. Hawkins was misinforming the court when he said his vehicle was pointing in a generally southerly direction when he went down there?

Mr. Goppert: Objected to as argumentative.

The Court: Sustain the objection.

Q. If Mr. Hawkins' statement as to the position of his vehicle going down the road was correct, then do you have an opinion as to how those tracks were made?

Mr. Goppert: That is objected to as [447] being——

The Court: Sustain the objection as argumentative.

Mr. Lush: That is all.

Mr. Jameson: That is all.

Mr. Jameson: We have another table.

Mr. Haughey: If the court please, I understand the Plaintiff's counsel will stipulate with defend-



ant's counsel that Defendant's offered Exhibit No. 20 is a set of discounted tables which correctly show the present value of an annuity of \$1.00 per year for periods from 1 to 50 years and calculated at rates of interest from 4 to 8 per cent, with each one-half per cent between those two figures shown.

The Court: You stipulated?

Mr. Lush: Yes, we so stipulated.

Mr. Haughey: We offer in evidence Defendant's Exhibit No. 20.

The Court: All right, it may be received in evidence.

(Whereupon said Defendant's Exhibit No. 20, being annuity tables, offered and received in evidence, is a part of this record.)

Mr. Jameson: Defendant rests, if the court please.

The Court: Rebuttal?

Mr. Lush: Your Honor, we would like to read into the record a stipulation that was entered into between Plaintiff's and Defendant's counsel with respect to testimony of certain absent witness. [448]

Mr. Jameson: Now if the court please, defendant objects to the stipulation of other evidence in the stipulation, not because it is in the form of stipulation and not because the witness is not present in court testifying or deposition but for the reason it is our opinion it is improper rebuttal.

Mr. Lush: Your Honor, there are parts of the stipulation and the stipulation goes to the testimony of Taaffae, who was riding with Hawkins. It has been stipulated by the attorneys that either side

may read into the record any portion of these stipulations that they desire. Part of the statements of Taaffae go to direct contradiction of Hawkins' statement with reference to his application of the brakes and we would like to read that portion of the stipulation into the record.

The Court: Where does this come from; his statement from some deposition you took somewhere?

Mr. Lush: No, your Honor. He gave statements to Mr. Goppert and he gave a statement to me and we have stipulated that those statements or any portion of them we might care to submit to the court may be submitted to the court just as though Taaffae were here and sworn.

The Court: Your objection is——

Mr. Jameson: Not to the form.

The Court: Not being rebuttal?

Mr. Jameson: It should have been used in the case [449] in chief.

The Court: Very well, put it in the record.

Mr. Lush: It is hereby stipulated between the parties hereto that Richard Taaffae, if present in court, would testify as follows: I am 24 years of age. I started working for Fred M. Manning, Inc., in 1941. I was in the Service for three years and two months and then started back to work for the Manning Company again on January 15th, 1946. I was roughneck until lately when I got transferred to the transportation department, and worked at that for two days and got in this accident. I was the helper for Robert Hawkins, who was operating

Unit No. 314, an International West Coast Special with flat bed trailer. I know it was after two o'clock when we came to a corner about nine miles north of Worland where there is a bridge across a drain ditch. I noticed the bus coming down the road toward us on the other side of the bridge. I glanced at the bus and Mr. Hawkins stepped on the brake, the airbrake hooked to the truck and trailer. I was just sitting there loose, my feet propped up, and I kind of fell over toward the windshield when he put the brake on. Then I raised back up and just as I raised up I suppose that was just as the crash occurred. At any rate I got hit awful hard right over the eye. When he first hit the brakes I was sitting there with my feet up on the box, crossed. I fell over, I slid toward the front end. I was relaxed and leaning back with [450] my eyes closed trying to go to sleep when for some reason I sat up, probably because Hawkins put on the brake but I'm not sure. Just as I sat up the trailer swung over onto the west side of the road. As I remember it, the trailer never got back on its own side of the road, but I am not sure. I know that after Hawkins applied the brakes he did not release them, but held them on until the crash. Whether the brakes did not take hold on the trailer or whether they did not take evenly I do not know, but I do know that if the trailer brakes had worked and worked evenly, we would not have skidded as we did regardless of the icy condition of the road at that point. We crashed into the bus on the left side of the road. I do not know how fast we were going

at any point but when I first sat up I noticed the tachometer read 1200 RPMs. I don't think the bus or truck were going over 10 miles per hour at the moment of impact.

Mr. Jameson: Now, if the court please, if that portion of the stipulation, that portion of the evidence is received, then we would like the balance of the evidence read. Now it is agreeable to read it now or to save time here to leave the stipulation.

Mr. Lush: I have no objection to the entire stipulation going in.

Mr. Jameson: We still feel it is improper rebuttal but we feel that if part of it goes in that it ought all go in. [451]

The Court: Yes, had he asked to use the evidence at the time he was putting in his case in chief the court ordinarily would allow counsel to put in proof of that kind.

Mr. Jameson: That is correct.

The Court: It should have perhaps gone in in chief had he requested it. That is done even though counsel objects to it, and I suppose that is what counsel desired of the court to permit that proof to go in because it wasn't available to him to have used it in chief.

Mr. Lush: We believed, your Honor, that the witness was going to be the witness for the other side and that the other side would produce the deposition or the statements, your Honor.

Mr. Jameson: If the court please, both sides have had to stipulate for a long time and it wasn't a case of it being received at a late date.

Mr. Lush: There was no delay there being received at a late date, but we did not know what Hawkins would testify to in regard to application of the brakes and this is in direct contradiction to Hawkins' testimony as to whether he applied the brakes.

The Court: Yes, the whole statement should go in and not simply one part of it.

Mr. Lush: Your Honor, it was stipulated by the parties either attorney could read any part of it in the record and [452] the only point I wish to make by that is we do not wish to be bound by the remaining testimony of Mr. Taaffae other than that part we read.

The Court: If either party can read part of it, all of you can read all of it.

Mr. Jameson: That is right, your Honor.

The Court: Let it go in. Call your next witness.

### GEORGE F. SINN

was called as a witness on rebuttal by plaintiff, and testified as follows:

#### Direct Examination

By Mr. Lush:

Q. Mr. Sinn, you have been sworn in this case and have given previous testimony in it, have you not?      A. Yes, sir.

Q. And you have placed yourself at the scene of the accident within a short time after it happened?      A. Yes, sir.

Q. Will you state whether or not the road imme-



(Testimony of George F. Sinn.)

diately south of the culvert is it rough or smooth?

A. Well, that stretch of the road is all smooth in there for half a mile.

Q. And did you observe any ice or accumulated snow or [453] anything of the sort that would cause roughness in the road at that point?

A. I did not.

Mr. Lush: You may cross-examine.

### Cross-Examination

By Mr. Goppert:

A. Mr. Sinn, directing your attention to the driveway to the east north of the scene of the accident, isn't it usually rough along that area on that roadway?

A. No, that road in there has been shaded from both sides and the oil is in perfect condition.

Q. Isn't there gravel comes out on that highway from that driveway?

A. Oh, there could be some gravel out there occasionally.

Q. That causes an uneven condition there at that point the same as it does in front of the Lamb driveway a little farther north?

A. Not always. There may be at times that it could be, yes.

Mr. Goppert: That is all.

CONRAD BRILL

was called as a witness on rebuttal for plaintiff, and having been first duly sworn, testified as [454] follows:

Direct Examination

By Mr. Lush:

Q. Will you state your full name, please?

A. Conrad Brill.

Q. Where did you live with reference to the scene of the accident nine miles north of Worland?

A. At the time?

Q. Yes, at the time of the accident?

A. About twelve miles north of Worland.

Q. Then that would be about three miles north of the scene of the accident.

A. Approximately.

Q. Calling your attention to the date of the accident, December 27th, 1946, were you living there on that day?

A. At that place?

Q. Yes.

A. Yes, sir.

Q. And do you remember what the weather conditions were immediately before the time of the accident in the area of your home?

A. The wind was blowing a little.

Q. You may state whether or not it rained the night before or the morning before?

A. Yes.

Q. It had rained?

A. Yes.

Q. Did that rain later turn to snow?

A. Yes, sir.

Q. Did you drive from your home to the scene of the accident on that date?

A. I did. [455]

Q. And at about what time?

(Testimony of Conrad Brill.)

A. Oh, approximately three o'clock I left home I guess.

Q. And will you tell us the condition of the road from your home to the scene of the accident?

Mr. Goppert: This is objected to as being improper rebuttal. They went into this on their direct case.

Mr. Lush: Your Honor, we did submit some testimony in our case in chief with reference to that particular item but if the court will permit the answer to that question, we are through with the witness.

The Court: Well, I think perhaps the objection would be good but under the circumstances I will permit him to answer the question.

Q. (By Mr. Lush): What was the condition of this road from your home to the scene of the accident?

A. Well, as I remember it was slick that day.

Q. Slick? A. Yes.

Q. Was there ice on the road? A. Yes.

Mr. Goppert: That is objected to as being leading and suggestive.

Mr. Lush: That is all.

The Court: Any cross-examination.

Mr. Goppert: No cross.

Mr. Lush: Plaintiff rests, your Honor. [456]

Mr. Jameson: Defense rests.

The Court: Now, have you any more documents to put in the record.

Mr. Lush: No, your Honor.

Mr. Goppert: We have none, your Honor.

The Court: Now, this is quite a record, gentlemen, as you all know, and the court reporter has a lot of work to get out that precedes this case, so I can't tell you and he couldn't tell you just when he will have the transcript ready for you, but as soon as he can and upon receipt of the transcript you gentlemen will file your briefs. Plaintiff may take thirty days and the defense thirty days, and thirty days for reply if necessary. And in your briefs our local rule speaks of a succinct statement of the facts, and, of course, you know that simply means a brief and concise statement and not cover any more ground than you have to, and then follow that up with your argument and your authorities. I mean, of course, the statement of facts as the plaintiff sees them from his standpoint to sustain his pleadings and the statement of the facts as the defense sees it from their standpoint to sustain their answer and defense. I think that is all. Of course, if you should need any additional time in the preparation of your briefs because of other work and being busy or called away the court is usually rather liberal in the allowance of time so counsel may not be [457] crowded too much to give them a fair show. I think that is all.

Mr. Lush: Thank you, your Honor.

Mr. Goppert: I want to thank you, Judge.

(10:30 a.m.) [458]

United States of America,  
State of Montana—ss.

I, Sidney O. Smith, do hereby certify that I am the Official Court Reporter in the above-entitled court, that the foregoing and annexed transcript constitutes a full, true and correct transcription of the proceedings had and the testimony taken, which was recorded in phonography and transcribed in longhand by me, in Civil Action No. 1043, Ernest B. Brownell, Plaintiff, vs. Fred M. Manning, Inc., et al., Defendant, at Billings, Montana, on May 16th, 17th, 18th and 19th, 1949.

Dated this 11th day of August, 1949.

/s/ SIDNEY O. SMITH,  
Official Court Reporter. [459]

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### CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD

United States of America,  
District of Montana—ss.

I, H. H. Walker, Clerk of the United States District Court for the District of Montana, do hereby certify and return to The Honorable, The United States Court of Appeals for the Ninth Circuit, that the foregoing volume consisting of 460 pages, numbered consecutively from 1 to 460 inclusive, constitutes a full, true and correct transcript of all portions of the record in case number 1043, Ernest B. Brownell vs. Fred M. Manning, Inc., et al., designated by the parties as the record on appeal therein,



as appears from the original records and files of said Court in my custody as such Clerk.

I further certify that the costs of said transcript amount to the sum of Sixty-Two and 60/100ths (\$62.60) Dollars, and have been paid by the appellant.

Witness my hand and the seal of said Court at Great Falls, Montana, this 3rd day of March, A.D. 1951.

[Seal]                      H. H. WALKER,  
Clerk, United States District Court for the District  
of Montana.

By /s/ ELIZABETH C. McKEE,  
Deputy Clerk.

[Endorsed]: Filed August 11, 1949. [460]

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[Endorsed]: No. 12875. United States Court of Appeals for the Ninth Circuit. Ernest B. Brownell, Appellant, vs. Fred M. Manning, Inc., Appellee. Transcript of Record. Appeal from the United States District Court for the District of Montana.

Filed March 6, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals  
for the Ninth Circuit.

Findings of Fact and Conclusions of Law or for a new trial.

9. Notice of Appeal and Bond.

10. Points relied on by Plaintiff-Appellant for reversal.

Dated this 12th day of March, 1951.

/s/ ERNEST B. BROWNELL,  
Appellant.

DAVIS, MICHEL, YAEGER &  
McGINLEY,

/s/ SIDNEY S. FEINBERG,

/s/ THOMAS C. COLTON,

By /s/ THOMAS C. COLTON,  
Attorneys for the Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed March 13, 1951.